

# Utility Energy Services Contracts: Enabling Documents



U.S. DEPARTMENT OF ENERGY  
OFFICE OF ENERGY EFFICIENCY  
AND RENEWABLE ENERGY



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## Department of Energy

Washington, DC 20585

Dear Colleagues,

The U.S. Department of Energy's Federal Energy Management Program (DOE/FEMP) is pleased to present, *Utility Energy Services Contracts: Enabling Documents*. These documents provide a selected set of background information materials that clarify the authority for Federal agencies to enter into utility energy services contracts. We have produced this book as a part of FEMP's ongoing educational effort to establish project financing as a standard Federal practice when implementing energy management improvements. This document is designed to assist Federal agency contracting officers, legal staff, and technical representatives who are interested in implementing utility energy service projects.

In the current era of shrinking appropriations, Federal energy and facility managers need all the financing tools they can get to achieve Federal energy efficiency goals. Many utilities have partnered with the Federal government to offer energy service contracts. The documents in this book clearly show that Federal agencies have the authority to enter into utility energy service contracts.

Fostering successful partnerships between Federal agencies, utilities, and energy service companies is one of FEMP's highest priorities. For more information about utility incentives, please call the appropriate DOE/FEMP local regional contact listed under the "Next Steps" tab of this book.

We at FEMP hope this information will be useful in building support for your energy service project as well as in assisting you in implementing the project.

With Best Regards,

A handwritten signature in black ink that reads "Brad Gustafson".

Brad Gustafson  
Utility Program Manager  
DOE/FEMP



# UTILITY ENERGY SERVICES CONTRACTS: ENABLING DOCUMENTS

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# Overview

## Overview

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### The Federal Energy Management Program

The Federal Energy Management Program (FEMP) is pleased to offer you this book as a valuable resource designed to assist you in making informed decisions concerning financing for energy projects within the Federal government. Legislation from Congress and orders from the President, such as the Energy Policy Act of 1992 (EPAct) and Executive Order 13123 (EO 13123), both require and enable Federal agencies to implement significant energy efficiency, water conservation, and renewable energy projects. The requirements and support of Congress and the President have increased the importance of FEMP's mission: to reduce the use and cost of energy in the Federal sector by advancing energy efficiency, water conservation, and the use of solar and other renewable energy sources. FEMP accomplishes its mission by leveraging both Federal and private resources to provide technical and financial assistance, mainly to other Federal agencies.

***FEMP is your partner for making projects happen.*** Tremendous opportunities exist for reducing energy consumption through improved energy-management practices both at the initial design and construction stage or later when energy-consuming equipment replacement is required. Implemented energy projects save taxpayer dollars and contribute to a cleaner and safer environment. FEMP is a resource for Federal agencies, state and local governments, and the private sector to facilitate the achievement of aggressive Federal energy-management goals by creating partnerships, leveraging resources, transferring technology, and providing training and project support.

### Utility Incentive Programs

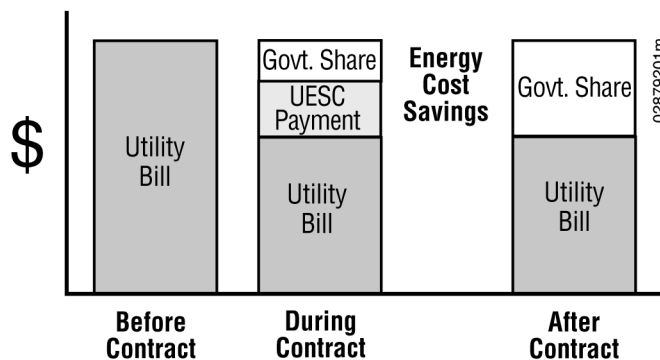
Federal agencies are eligible to use utility incentive programs to procure financing for energy-savings projects in order to meet EPAct goals. These programs range from simple rebate programs to full, turnkey project implementation programs that include financing, project management, and operations and maintenance. A Utility Energy Services Contract is one vehicle that a Federal agency and its utility can use to implement energy efficiency, water conservation, and renewable energy projects.

## Utility Energy Services Contracts

In a Utility Energy Services Contract (UESC), a utility company agrees to provide Federal agencies with services or products (or both) that are designed to make Federal facilities more energy efficient. Federal facilities can also obtain project financing from a utility company through a UESC. During the contract period, the facility pays a lower utility bill as well as a payment to the utility for the UESC. The total of these two payments may be less than or equal to an average amount of utility bills before the UESC. Although projects are not required to reduce the government's costs during the contract period, they often do. After the project is complete, the utility bill will be reduced as a result of increased energy and water efficiency.

### Utility Energy Services Contracts Reallocate the Government's Utility Bill

- Pay a lower utility bill
- Pay for equipment
- Achieve cost savings for the government



UESCs offer many benefits to a Federal agency, including:

- Streamlined procurement process
- Flexible contracts
- Relationship with a long-standing entity
- Payment through the utility bill
- Flexibility in measurement and verification
- One-stop-shopping for a turnkey project
- Water savings can be included in projects

Agencies can capitalize on the many advantages of a UESC. One of the primary benefits is the ability to implement energy efficiency projects without using direct appropriations (however, UESCs can be used in conjunction with appropriations). Vehicles such as areawide contracts, basic ordering agreements, and other agreements used in UESCs save time in implementing site-specific projects. This type of contracting allows agencies great flexibility in developing energy conservation, water conservation, and renewable energy projects, thereby assisting agencies in meeting the goals of EPAct and EO 13123.

## Legislation and Executive Actions

This section outlines the legislative and executive authorities that support contracting for utility services, along with regulations associated with procuring these services. Also provided is information on various policy memoranda prepared to assist both technical and contracting staff in the clarification of procurement requirements to secure available utility services.

The procurement of both utility commodities (electric, gas, and water) and utility services, which include installation of energy efficiency, water conservation, and renewable energy measures, has a significant history of legislative backing.

### *The Energy Policy Act of 1992 (EPAct), Public Law 102-486*

EPAct contains provisions regarding energy-management requirements, budget treatment for energy conservation measures, incentives for Federal agencies, reporting requirements, new technology demonstrations, and agency surveys of energy-saving potential.

Prior to amendments enacted as part of EPAct, the National Energy Conservation Policy Act (NECPA) was the primary legislative authority directing Federal agencies to improve energy management in their facilities and operations. NECPA was passed in 1978 in response to the energy crises of the 1970s. In 1992, EPAct amended NECPA, requiring that each Federal agency achieve targeted reductions in energy consumption within a specific time period. Measured on a British Thermal Unit per gross-square-foot (Btu/GSF) basis and compared to a fiscal year (FY) 1985 baseline, Federal buildings were required to achieve a 10% reduction in energy consumption by FY 1995. In addition, EPAct amended Section 543 of NECPA to require a 20% reduction in Btu/GSF energy consumption by FY 2000, measured against the FY 1985 baseline.

EPAct also amended NECPA to include an additional energy-management requirement for Federal agencies. Section 543(b) of NECPA, as amended by EPAct, requires that "not later than January 1, 2005, each agency shall, to the maximum extent practicable, install in Federal buildings owned by the United States, energy and water conservation measures with payback periods of less than 10 years," as determined by using Federal life-cycle costing methods and procedures. However, this does not preclude the implementation of projects with payback periods of greater than 10 years.

EPAct Section 152 Subtitle F - Federal Agency Energy Management, amends Sections 542 to 550, Part 3, of the NECPA. These sections have been codified as *42 USC 8256*. Section 546, part (c), provides specific information as it relates to utility incentive programs. The five key elements of this section are highlighted below.

1. Agencies are authorized and encouraged to participate in programs to increase energy efficiency and water conservation or manage electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

2. Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.
3. Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.
4. If an agency satisfies the criteria that generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.
5. Agencies (except the Department of Defense) shall retain 50% of energy and water cost savings from appropriated funds for additional energy projects, including employee incentive programs.

Section 546, parts (a)–(c) are included in this book. The full text of EPLA (Public Law 102-486) may be found on the Library of Congress *THOMAS* Web site, <http://thomas.loc.gov/>.

### ***Energy Savings and Water Conservation at Military Installations***

The legislation codified as *10 USC Sections 2865 and 2866* is part of a larger military construction and military family-housing bill. It applies to Department of Defense (DOD) facilities and is concerned with energy-saving and water conservation goals and plans at military facilities. The code stipulates that DOD facilities:

1. May enter into sole source procurement from gas or electric utilities to design and implement cost-effective demand management and conservation services.
2. May implement projects with a positive net-present-value with a payback of 10 years or less.
3. Shall retain two-thirds of energy and water cost savings from appropriated energy projects and projects as determined by the commanding officer at the site.

### ***Federal Acquisition Regulation, Part 41***

Section 201 of the Federal Property and Administrative Services Act of 1949 (*40 USC Section 481*) provides the statutory authority for the General Services Administration (GSA) to acquire utility services. This act has been codified in the Code of Federal Regulations, Title 48, Part 41 of the Federal Acquisition Regulations (FAR Part 41). GSA has delegated to both DOD and the Department of Energy (DOE) the authority to acquire utility services.

FAR Part 41 covers the use of areawide contracts (AWCs) for the purchase of all types of utility services. An AWC is between GSA and a utility-service supplier to cover utility-service needs of Federal agencies within the franchised territory of the supplier. The basic scope of utility services includes electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, and high-temperature hot water.



Several key provisions in FAR Part 41 related to AWCs should be noted:

1. AWCs generally provide for ordering utility service at rates approved of and established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service, but these may require the approval of the regulatory body.
2. Acquired services are for facilities located in a utility's franchised territory or service area.
3. Specific services at specific facilities are requested and executed through delivery orders.

The Public Utilities Organization within GSA has responsibility for maintaining and negotiating new or modified AWCs. For a current listing on the Internet, go to <http://www.gsa.gov/pbs/xu/contracts1.htm>.

Specific questions regarding AWCs should be directed to either

Virgil Ostrander  
(202) 501-3994  
[virgil.ostrander@gsa.gov](mailto:virgil.ostrander@gsa.gov) or

Linda L. Collins  
(202) 501-4267  
[linda.l.collins@gsa.gov](mailto:linda.l.collins@gsa.gov)

The Energy Center of Expertise within GSA has issued the *Utility Areawide User's Manual* and the *Procuring Energy Management Services with the Utility Areawide Contract* to assist agencies using AWCs to procure utility services. These guides may be viewed and downloaded from the Internet at <http://www.gsa.gov/pbs/centers/energy>.

### ***Executive Order 13123, Greening the Government through Efficient Energy Management***

On June 3, 1999, President Clinton signed EO 13123 promoting Government-wide energy efficiency and renewable energy, thereby revoking EO 12902. The new Executive Order strengthens the government's efforts to pursue energy and cost savings, and raises the energy-savings goal to a 35% reduction in energy consumption per square foot in nonexempt Federal buildings by the year 2010 compared to a 1985 baseline. Certain facilities may be considered exempt from this goal, if an agency uses DOE-established criteria to determine that compliance with EO 13123 or EPA Act is not practical.

### **Legal Opinions**

The legislation and executive actions that enable agencies to enter into UESCs can be interpreted in many ways. As a result, legal opinions from varying Federal agencies have

been issued on this subject. Several legal opinions considered most pertinent to UESCs are included in this book.

## **Agency Guidance**

As a result of the vast array of legislation and associated regulations regarding UESCs, barriers have developed regarding interpretation of the intent of the legislation and the implementation of various regulations. Therefore, agencies have provided guidance such as the *Defense Energy Program Policy Memorandum* and the *Alternative Financing Guidance Memoranda*.

### ***Defense Energy Program Policy Memorandum (DEPPM)***

The DOD, through the Office of the Under Secretary of Defense, has issued a series of DEPPMs that apply to its energy-management activities. *DEPPM 94-1, Participation in Public Utility Sponsored Energy Conservation and Demand Side Management (EC/DSM) Programs*, establishes a coordinated and integrated strategy for DOD participation in commercial utility companies' EC/DSM programs. As stated in this DEPPM, the objective is to maximize energy and dollar savings.

### ***Alternative Financing Guidance Memoranda (AFGM)***

The Interagency Energy Management Task Force publishes AFGM. Through FEMP, DOE develops AFGM, which are then submitted to the task force for review and revision by a subcommittee. Final approval comes from the task force before the AFGM are made available for use by all agencies. These memoranda are patterned after DEPPMs and focus on issues related to alternative financing. One aspect of developing these memoranda is to include, by reference, any legal opinions that might exist regarding the individual memorandum topic. Included in this book are AFGM #001, which provides guidance on the issue of sole source, AFGM #002, which provides guidance on the issue of congressional notification for utility projects, AFGM #003, which provides guidance on the relationship of the anti-deficiency act to multi-year contracts, and AFGM #004, which provides guidance on Federal fund sources for multi-year contracts. Additional memoranda that impact energy efficiency projects will continue to be developed.

## **Next Steps**

Because it provides information about the authorities that enable agencies to enter into UESCs, this book empowers you to reduce the use and cost of energy in the Federal sector. The *Next Steps* section of this book contains contacts, places to find more information, sample model agreements, and information about utility-related groups within FEMP. This information will assist you in initiating an energy and water efficiency project at your facility. Reading this book is the first step; the next step is up to you.

# Legislation and Executive Action

*42 USC Section 8256*

## **Energy Policy Act of 1992 (P.L.102-486)**

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Following are relevant portions of the National Energy Conservation Policy Act (NECPA) as Amended by EPAct.

Sections 151, 152, and 541–544 are omitted from this document.

### **NECPA Title III, Section 546 Incentives for Agencies**

(a) **CONTRACTS.** (1) Each agency shall establish a program of incentives for conserving, and otherwise making more efficient use of, energy as a result of entering into contracts under Title VIII [*42 USC 8287 et seq.*] of this Act.

(2) **Implementation.** The Secretary shall, no later than 18 months after the date of the enactment of the Energy Policy Act of 1992 and after consultation with Director of the Office of Management and Budget, the Secretary of Defense, and the administrator of General Services, develop appropriate procedures and methods for use by agencies to implement the incentives referred to in paragraph (1).

Item (b) **FEDERAL ENERGY EFFICIENCY FUND** is omitted from this document.

(c) **UTILITY INCENTIVE PROGRAMS.** (1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

(2) Each agency may accept financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.

(3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by each agency.

(4) If an agency satisfies the criteria which generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.

(5)(A) An amount equal to fifty percent of the energy and water cost savings realized by an agency (other than the Department of Defense) with respect to funds appropriated for any fiscal year beginning after fiscal year 1992 (including financial benefits resulting from energy savings performance contracts under Title VIII and utility energy efficiency rebates) shall, subject to appropriation, remain available for expenditure by such agency for additional energy efficiency measures which may include related employee incentive programs, particularly at those facilities at which energy savings were achieved.

(B) Agencies shall establish a fund and maintain strict financial accounting and controls for savings realized and expenditures made under this subsection. Records maintained pursuant to this subparagraph shall be made available for public inspection upon request.

Item (d) FINANCIAL INCENTIVE PROGRAM FOR FACILITY ENERGY MANAGERS and sections 549-551, 153-155, and Title VIII are omitted from this document.

## Energy Savings at Military Installations

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(a) ENERGY PERFORMANCE GOAL AND PLAN. (1) The Secretary of Defense shall designate an energy performance goal for the Department of Defense for the years 1991 through 2000.

(2) To achieve the goal designated under paragraph (1), the Secretary shall develop a comprehensive plan to identify and accomplish energy conservation measures to achieve maximum cost-effective energy savings.

(3) For the purpose of implementing any energy performance plan, the Secretary shall provide that the selection of energy conservation measures, including energy efficient maintenance or water efficient maintenance, under such plan shall be limited to those with a positive net present value over a period of 10 years or less.

(4) In paragraph (3), the term "energy efficient maintenance or water efficient maintenance" includes —

(A) the repair by replacement of equipment or systems, such as lighting, heating, or cooling equipment or systems, industrial processes, or water efficiency applications, with technology that -

(i) will achieve the most cost-effective energy savings over the life-cycle of the equipment or system being repaired; and

(ii) will meet the same end needs as the equipment or system being repaired; and

(B) improvements in an operation or maintenance process, such as improved training or improved controls, that result in reduced costs through energy savings or later cost savings.

(a) USE OF ENERGY COST SAVINGS. (1) Two-thirds of the portion of the funds appropriated to the Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts, shall remain available for obligation under paragraph (2) through the end of the fiscal year following the fiscal year for which the funds were appropriated, without additional authorization or appropriation.

(2) The Secretary shall provide that the amount that remains available for obligation under paragraph (1) and section 2866(a)(3) of this title, and the funds made available under section 2867(b)(2) of this title, shall be used as follows:

(A) One-half of the amount shall be used for the implementation of additional energy conservation measures and for water conservation activities at such buildings, facilities, or installations of the Department of Defense as may be designated (in accordance with regulations prescribed by the Secretary of Defense) by the head of the department, agency, or instrumentality that realized the savings referred to in paragraph (1) or in section 2866(a)(3) of this title.

(B) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for -

(i) improvements to existing military family housing units;

(ii) any unspecified minor construction project that will enhance the quality of life of personnel; or

(iii) any morale, welfare, or recreation facility or service.

(3) Financial incentives received from gas or electric utilities under subsection (d)(2), and from utilities for management of water demand or water conservation under section 2866(a)(2) of this title, shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(c) SHARED ENERGY SAVINGS CONTRACTS. (1) The Secretary of Defense shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of the Department as well as the private sector.

(2) (A) In carrying out paragraph (1), the Secretary of Defense may -

- (i) request statements of qualifications (as prescribed by the Secretary of Defense), including financial and performance information, from firms engaged in providing shared energy savings contracting;
- (ii) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;
- (iii) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and
- (iv) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

(B) In carrying out paragraph (1), the Secretary may also provide for the direct negotiation, by departments, agencies, and instrumentalities of the Department of Defense, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(d) ENERGY SAVING ACTIVITIES. (1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of electricity demand or for energy conservation or by any utility for water conservation activities.

(2) The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from a gas or electric utility, to adopt technologies and practices that the Secretary determines are cost effective for the Federal Government.

(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

(4)(A) If an agreement under paragraph (3) provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repaid by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer.



(B) Subject to the availability of appropriations, repayment of costs advanced under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to any energy-saving device or technology installed at a military installation pursuant to the agreement vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(e) **ENERGY CONSERVATION CONSTRUCTION PROJECTS.** (1) The Secretary of Defense may carry out a military construction project for energy conservation, not previously authorized, using funds appropriated or otherwise made available for that purpose.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(f) **ANNUAL REPORT.** Not later than December 31 of each year, the Secretary of Defense shall transmit an annual report to the Congress containing a description of the actions taken to carry out this section, and the savings realized from such actions, during the fiscal year ending in the year in which the report is made. The Secretary shall also include in each report the types and amount of financial incentives received under subsection (d)(2) and section 2866(a)(2) of this title during the period covered by the report and the appropriation account or accounts to which the incentives were credited.

## Water Conservation at Military Installations

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(a) WATER CONSERVATION ACTIVITIES. (1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by a utility for the management of water demand or for water conservation.

(2) The Secretary of Defense may authorize a military installation to accept a financial incentive (including an agreement to reduce the amount of a future water bill), goods, or services generally available from a utility, for the purpose of adopting technologies and practices that —

(A) relate to the management of water demand or two water conservation; and

(B) as determined by the Secretary, are cost effective for the Federal Government.

(2) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into an agreement with a utility to design and implement a cost-effective program that provides incentives for the management of water demand and for water conservation and that addresses the requirements and circumstances of the installation. Activities under the program may include the provision of water management services, the alteration of a facility, and the installation and maintenance by the utility of a water-saving device or technology.

(4)(A) If an agreement under paragraph (3) provides for a utility to pay in advance the financing costs for the design or implementation of a program referred to in that paragraph and for such advance payment to be repaid by the United States, the cost of such advance payment may be recovered by the utility under terms that are not less favorable than the terms applicable to the most favored customer of the utility.

(B) Subject to the availability of appropriations, a repayment of an advance payment under subparagraph shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to a water-saving device or technology installed at a military installation pursuant to the agreement shall vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(b) **USE OF WATER COST SAVINGS.** Water cost savings realized under this section shall be used as provided in section 2865(b)(2) of this title.

(c) **WATER CONSERVATION CONSTRUCTION PROJECTS.** (1) The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the appropriate committees of Congress of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

## **Federal Acquisition Regulations, Part 41**

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### **Acquisition of Utility Services**

#### **Subpart 41.1—General**

##### **41.100 Scope of part.**

This part prescribes policies, procedures, and contract format for the acquisition of utility services. (See 41.102(6) for services that are excluded from this part.)

##### **41.101 Definitions.**

As used in this part,

"Areawide contract" means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier. Each areawide contract includes an "Authorization" form for requesting service, connection, disconnection, or change in service.

"Authorization" means the document executed by the ordering agency and the utility supplier to order service under an areawide contract.

"Connection charge" means all nonrecurring costs, whether, refundable or nonrefundable, to be paid by the Government to the utility supplier for the required connecting facilities, which are installed, owned, operated, and maintained by the utility, supplier (see Termination liability).

"Delegated agency" means an agency that has received a written delegation of authority from GSA to contract for utility services for periods not exceeding ten years (see 41.103(6)).

"Federal Power and Water Marketing Agency" means a Government entity that produces, manages, transports, controls, and sells electrical and water supply service to customers.

"Franchise territory" means a geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity, or other legal means.

"Intervention" means action by GSA or a delegated agency to formally participate in a utility regulatory proceeding on behalf of all Federal executive agencies.

"Multiple service locations" means the various locations or delivery points in the utility supplier's service area to which it provides service under a single contract.

"Rates" may include rate schedules, riders, rules, terms and conditions of service, and other tariff and service charges, *e.g.*, facilities use charges.

"Separate contract" means a utility services contract (other than a GSA areawide contract, an Authorization under an areawide contract, or an interagency agreement), to cover the acquisition of utility services.

"Termination liability" means a contingent Government obligation to pay a utility supplier the unamortized portion of a connection charge and any other applicable nonrefundable service charge as defined in the contract in the event the Government terminates the contract before the cost of connection facilities has been recovered by the utility supplier (see "Connection charge").

"Utility service" means a service such as furnishing electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, or high temperature hot water. The application of Part 41 to other services (*e.g.*, rubbish removal, snow removal) may be appropriate when the acquisition is not subject to the Service Contract Act of 1965 (see 37.107).

#### **41.102 Applicability.**

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the Government, including connection charges and termination liabilities.

(b) This part does not apply to

(1) Utility services produced, distributed, or sold by another Federal agency. In those cases, agencies shall use interagency agreements (see 41.206);

(2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency's marketing or distribution program;

(3) Cable television (CATV) and telecommunications services;

(4) Acquisition of natural or manufactured gas when purchased as a commodity;

(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility's own distribution system, or construction/maintenance of Government-owned facilities; or

(7) Third party financed shared-savings projects authorized by 42 USC 8287.

However, agencies may utilize Part 41 for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. 8287 for periods not to exceed 25 years.

#### **41.103 Statutory and delegated authority.**

(a) *Statutory authority.* (1) The General Services Administration (GSA) is authorized by section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481), to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies. This authority includes related functions such as managing public utility services and representing Federal agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by section 201 of the Act to contract for utility services for periods not exceeding ten years.

(2) The Department of Defense (DOD) is authorized by 10 U.S.C. 2304 and 40 U.S.C. 474(d)(3) to acquire utility services for military facilities.

(3) The Department of Energy (DOE) is authorized by the Department of Energy Organization Act (42 U.S.C. 7251, et seq.) to acquire utility services. DOE is authorized by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2204), to enter into new contracts or modify existing contracts for electric services for periods not exceeding 25 years for uranium enrichment installations.

(b) *Delegated authority.* GSA has delegated its authority to enter into utility service contracts for periods not exceeding ten years to DOD and DOE, and for connection charges only to the Department of Veteran affairs. Contracting pursuant to this delegated authority shall be consistent with the requirements of this part. Other agencies requiring utility service contracts for periods over one year, but not exceeding ten years, may, request a delegation of authority from GSA at the address specified in 41.301(a) In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

(c) Requests for delegations of contracting authority from GSA shall include .a certification from the acquiring agency's Senior Procurement Executive that the agency has—

- (1) An established acquisition program;
- (2) Personnel technically qualified to deal with specialized utilities problems; and
- (3) The ability to accomplish its own pre-award contract review.

## **Subpart 41.2 — Acquiring Utility Services**

### **41.201 Policy.**

(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.

(b) Except for acquisitions at or below the simplified acquisition threshold, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Public Law 100–202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state

utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287, (which pertains to the subject of shared energy savings including cogeneration):

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may (i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.

(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, e.g., consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers shall provide a representation that service can be provided in a manner consistent with section 8093 of Public Law 100-202 (see 41.201(d)).

#### **41.202 Procedures.**

(a) Prior to executing a utility service contract, the contracting officer shall comply with Parts 6 and 7 and subsections 41.201(d) and (e) of this part. In accordance with Parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition provided that the contracting officer determines that any resultant contract would not be inconsistent with applicable state law governing the provision of electric utility services. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement. The scope of the term "entire utility service" includes the provision of the utility service capacity, energy, water, sewage, transportation, standby or back-up, service, transmission and/or distribution service, quality assurance, system reliability, system operation and maintenance, metering, and billing

(b) In performing a market survey (see 7.101), the contracting officer shall consider, in addition to alternative competitive sources, use of the following:

- (1) GSA areawide contracts (see 41.204);
- (2) Separate contracts (see 41.205).
- (3) Interagency agreements (see 41.206).

(c) When a utility supplier refuses to execute a tendered contract as outlined in 41.201(b), the agency shall obtain a written definite and final refusal signed by a corporate officer or other responsible official of the supplier (or if unobtainable, document any unwritten refusal) and transmit this document, along with statements of the reasons for the refusal and the record of negotiations, to GSA at the address specified at 41.301(a). Unless urgent and compelling circumstances exist, the contracting officer shall notify GSA prior to acquiring utility services without executing a tendered contract. After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U.S.C. 1501(a)(8)

- (1) By issuing a purchase order in accordance with 13.302; or

(2) By ordering the necessary utility service and paying for it upon the presentation of an invoice, provided that a determination is approved by the head of the contracting activity that a written contract cannot be obtained and that the issuance of a purchase order is not feasible.

(d) When obtaining service without a bilateral written contract, the contracting officer shall establish a utility history file on each acquisition of utility service provided by a contractor. This utility history file shall contain, in addition to applicable documents in 4.803, the following information:

- (1) The unsigned, tendered contract and any related letter of transmittal.

(2) The reasons stated by the utility supplier for not executing the tendered contract, the record of negotiations, and a written definite and final refusal by a corporate officer or other responsible official of the supplier (or if unobtainable, documentation of unwritten refusal).

- (3) Services to be furnished and the estimated annual cost.

- (4) Historical record of any applicable connection charges.

- (5) Historical record of any applicable ongoing capital credits.

- (6) A copy of the applicable rate schedule.

(e) If the Government obtains utility service pursuant to paragraph (c) of this section, the contracting officer shall, on an annual basis beginning from the date of final refusal, take action to execute a bilateral written contract. The contracting officer shall document the utility history file with the efforts made and the agency shall notify GSA, in writing, if the utility continues to refuse to execute a bilateral, contract.

#### **41.203 GSA assistance.**

(a) GSA will, upon request, provide technical and acquisition assistance, or will delegate its contracting authority for the furnishing of the services described in this part for any Federal agency, mixed-ownership Government corporation, the District of Columbia, the Senate, the House of Representatives, or the Architect of the Capitol and any activity under the Architect's direction.

- (b) Agencies, seeking assistance shall provide upon request by GSA the information listed in 41.301.



#### **41.204 GSA areawide contracts.**

(a) *Purpose.* GSA enters into areawide contracts (see 41.101) for use by Federal agencies. Areawide contracts provide a pre-established contractual vehicle for ordering utility services under the conditions in paragraph (c)(1) of this section.

(b) *Features.* (1) Areawide contracts generally provide for ordering utility service at rates approved and/or established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service with the supplier (see paragraph (c) of this section). Rates other than those published may require the approval of the regulatory body.

(2) Areawide contracts are negotiated with utility service suppliers for the provision of service within the supplier's franchise territory or service area.

(3) Due to the regulated nature of the utility industry, as well as statutory restrictions associated with the procurement of electricity (see 41.201(d)), competition is typically not available within the entire geographical area covered by an areawide contract, although it may be available at specific locations within the utility's service area. When competing suppliers are available, the provisions of subparagraph (c)(1) of this section apply.

(c) *Procedures for obtaining service.* (1) Any Federal agency having a requirement for utility services within an area covered by an areawide contract shall acquire services under that areawide contract unless—

(i) Service is available from more than one supplier or

(ii) The head of the contracting activity or designee otherwise determines that use of the areawide contract is not advantageous to the Government.

If service is available from more than one supplier, service shall be acquired using competitive acquisition procedures (see 41.202(a)). The determination required by subparagraph (c)(1)(ii) of this section shall be documented in the contract file with an information copy furnished to GSA at the address in 41.301(a).

(2) Each areawide contract includes an authorization form for ordering service, connection, disconnection, or change in service. Upon execution of an authorization by the contracting officer and utility supplier, the utility supplier is required to furnish services, without further negotiation, at the current, applicable published or unpublished rates, unless other rates, and/or terms and conditions are separately negotiated by the Federal agency with the supplier.

(3) The contracting officer shall execute the Authorization, and attach it to a Standard Form (SF) 26, Award/Contract, along with any modifications such as connection charges, special facilities, or service arrangements. The contracting officer shall also attach any specific fiscal, operational, and administrative requirements of the agency, applicable rate schedules, technical information and detailed maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the Authorization/contract.

(d) *List of areawide contracts.* A list of current GSA areawide contracts is available from the GSA office specified at 41.301(a). The list identifies the types of services and the geographic area served. A copy of the contract may also be obtained from this office.

(e) *Notification.* Agencies shall provide GSA at the address specified at 41.301(a) a copy of each SF 26 and executed Authorization issued under an areawide contract within 30 days after execution.

#### **41.205 Separate contracts.**

(a) In the absence of an areawide contract or interagency agreement (see 41.206), agencies shall acquire utility services by separate contract subject to this part, and subject to agency contracting authority.

(b) If an agency enters into a separate contract, the contracting officer shall document the contract file with the following information:

(1) The number of available suppliers.

(2) Any special equipment, service reliability, or facility requirements and related costs.

(3) The utility supplier's rates, connection charges, and termination liability.

(4) Total estimated contract value (including costs in subparagraphs (b)(2) and (3) of this subsection).

(5) Any technical or special contract terms required:

(6) Any unusual characteristics of services required.

(7) The utility's wheeling, or transportation policy, for utility service.

(c) If requesting GSA assistance with a separate contract, the requesting agency shall furnish the technical and acquisition data specified in 41.205(b), 41.301, and such other data as GSA may deem necessary.

(d) A contract exceeding a 1-year period, but not exceeding ten years (except pursuant to 41.103), may be justified, and is usually required, where any of the following circumstances exist:

(1) The Government will obtain lower rates, larger discounts, or more favorable terms and conditions of service.

(2) A proposed connection charge, termination liability, or any other facilities charge to be paid by the Federal Government will be reduced or eliminated;

(3) The utility service supplier refuses to render the desired service except under a contract exceeding a 1-year period.

#### **41.206 Interagency agreements.**

Agencies shall use interagency agreements (e.g., consolidated purchase, joint use, or cross-service agreements) when acquiring utility service or facilities from other Government agencies and shall comply with the policies and procedures at Subpart 17.5, Interagency Acquisitions under the Economy Act.

### **Subpart 41.3—Requests for Assistance**

#### **41.301 Requirements.**

(a) Requests for delegations of GSA contracting authority assistance with a proposed contract as provided in 41.203, and the submission of other information required by this part, shall be sent or submitted to the General Services Administration (GSA) region in which service is required. The names and locations of GSA regional offices are available from the:

Public Utilities Division (PPU)  
Public Buildings Service  
Washington DC 20405

(b) Requests for contracting assistance for utility services shall be sent not later than 120 days prior to the date new services are required to commence or an existing contract will expire. Requests for assistance shall contain the following information:

- (1) A technical description or specification of the type, quantity, and quality of service required, and a delivery schedule.
- (2) A copy of any service proposal or proposed contract.
- (3) Copies of all current published or unpublished rates of the utility supplier.
- (4) Identification of any unusual factors affecting the acquisition.
- (5) Identification of all available sources or methods of supply, an analysis of the cost-effectiveness of each, and a statement of the ability of each source to provide the required service, including the location and a description of each, available supplier's facilities at the nearest point of service, and the cost of providing or obtaining necessary backup and other ancillary services.

(c) For new utility service requirements, the agency shall furnish the information in paragraph (a) of this section and the following as applicable:

- (1) The date initial service is required.
- (2) For the first 12 months of full service, estimated maximum demand, monthly consumption, other pertinent information (e.g., demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.
- (3) Known or estimated time schedule for growth to ultimate requirements.
- (4) Estimated ultimate maximum demand and ultimate monthly consumption.
- (5) A simple schematic diagram or line drawing showing the meter locations, the location of the new utility facilities to be constructed on Federal property by the Federal agency, and any required new connection facilities on either side of the delivery point to be constructed by the utility supplier to provide the new services.
- (6) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency receiving such utility services.
- (7) The following data concerning proposed facilities and related charges or costs:
  - (i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the agency, together with a description of the supplier's proposed facilities and estimated construction costs, and its rationale for the charge, e.g., tariff provisions or policies.
  - (ii) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities through use of its own resources or by separate contract. When feasible, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(d) For existing utility service, the agency shall furnish GSA the information in paragraph (b) of this section and the following, as applicable:

- (1) A copy of the most recent 12-months' service invoices.

(2) A tabulation, by month, for the most recent 12 months, showing the actual utility demands, consumption, connection charges, fuel adjustment charges, and the average monthly cost per unit of consumption.

(3) An estimate, by month, for the next 12 months, showing the estimated maximum demands, monthly consumption, other pertinent information (e.g., demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(4) Accounting and appropriation data to cover the costs for the continuation of utility services.

(5) A statement noting whether the transformer, or other system components, on either side of the delivery point are owned by the Federal agency or the utility supplier, and if the metering is on the primary or secondary side of the transformer.

## **Subpart 41.4—Administration**

### **41.401 Monthly and annual review.**

Agencies shall review utility service invoices on a monthly basis and all utility accounts with annual values exceeding the simplified acquisition threshold on an annual basis. Annual reviews of accounts with annual values at or below the simplified acquisition threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.

### **41.402 Rate changes and regulatory intervention.**

(a) When a change is proposed to rates or terms and conditions of service to the Government, the agency shall promptly determine whether the proposed change is reasonable, justified, and not discriminatory.

(b) If a change is proposed to rates or terms and conditions of service that may be of interest to other Federal agencies, and intervention before a regulatory body is considered justified, the matter shall be referred to GSA. The agency may request from GSA a delegation of authority for the agency to intervene on behalf of the consumer interests of the Federal executive agencies (see 41.301).

(c) Pursuant to 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, if a regulatory body approves a rate change, any rate change shall be made a part of the contract by unilateral contract modification or otherwise documented in accordance with agency procedures. The approved applicable rate shall be effective on the date determined by the regulatory body and resulting rates and charges shall be paid promptly to avoid late payment provisions. Copies of the modification containing the approved rate change shall be sent to the agency's paying office or office responsible for verifying billed amounts (see 41.401).

(d) If the utility supplier is not regulated and the rates, terms, and conditions of service are subject to negotiation pursuant to the clause at 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, any rate change shall be made a part of the contract by contract modification, with copies sent to the agency's paying office or office responsible for verifying billed amounts.

## **Subpart 41.5—Solicitation Provision and Contract Clauses**

### **41.501 Solicitation provision and contract clauses.**

(a) Because the terms and conditions under which utility suppliers furnish service may vary from area to area, the differences may influence the terms and conditions appropriate to a particular utility's contracting situation. To accommodate requirements that are peculiar to the contracting situation, this section prescribes provisions and clauses on a "substantially the same as" basis (see 52.101) which permits the contracting officer to prepare and utilize variations of the prescribed provision and clauses in accordance with agency procedures.

(b) The contracting officer shall insert in solicitations for utility services a provision substantially the same as the provision at 52.241-1, Electric Service Territory Compliance Representation, when proposals from alternative electric suppliers are sought.

(c) The contracting officer shall insert in solicitations and contracts for utility services clauses substantially the same as the clauses at—

- (1) 52.241-2, Order of Precedence-Utilities;
- (2) 52.241-3, Scope and Duration of Contract;
- (3) 52.241-4, Change in Class of Service;
- (4) 52.241-5, Contractor's Facilities; and
- (5) 52.241-6, Service Provisions.

(d) The contracting officer shall insert clauses substantially the same as the clauses listed below in solicitations and contracts under the prescribed conditions

(1) 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services are subject to a regulatory body. (Except for GSA areawide contracts, the contracting officer shall insert in the blank space provided in the clause the name of the contracting officer. For GSA areawide contracts, the contracting officer shall insert the following: "GSA and each areawide customer with annual billings that exceed \$250,000").

(2) 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services are not subject to a regulatory body.

(3) 52.241-9, Connection Charge, when a refundable connection charge is required to be paid by the Government to compensate the contractor for furnishing additional facilities necessary to supply service. (Use Alternate I to the clause if a nonrefundable charge is to be paid. When conditions require the incorporation of a nonrecurring, nonrefundable service charge or a termination liability, see paragraphs (d)(6) and (d)(4) of this section).

(4) 52.241-10, Termination Liability, when payment is to be made to the contractor upon termination of service in conjunction with or in lieu of a connection charge upon completion of the facilities.

(5) 52.241-11, Multiple Service Locations (as defined in 41.101), when providing for possible alternative service locations, except under areawide contracts, is required.

(6) 52.241-12, Nonrefundable, Nonrecurring Service Charge, when the Government is required to pay a nonrefundable, nonrecurring membership fee, a charge for initiation of service, or a contribution for the cost of facilities construction. The Government may provide for inclusion of such agreed amount or fee as a part of the connection charge, a part of the initial payment for services, or as periodic payments to fulfill the Government's obligation.

(7) 52.241-13, Capital Credits, when the Federal Government is a member of a cooperative and is entitled to capital credits, consistent with the bylaws and governing documents of the cooperative.

- (e) Depending on the conditions that are appropriate for each acquisition, the contracting officer shall also insert in solicitations and contracts for utility services the provisions and clauses prescribed elsewhere in the FAR.

## **Subpart 41.6—Forms**

### **41.601 Utility services forms.**

(a) If acquiring utility services under other than an areawide contract, a purchase order or an interagency agreement, the Standard Form (SF) 33, Solicitation, Offer and Award; SF 26, Award/Contract; or SF 1447, Solicitation/Contract, shall be used.

(b) The contracting officer shall incorporate the applicable rate schedule. in each contract, purchase order or modification.

## **Subpart 41.7—Formats**

### **41.701 Formats for utility service specifications:**

(a) The following specification formats for use in acquiring utility services are available from the address specified at 41.301(a) and may be used and modified at the agency's discretion:

- (1) Electric service.
- (2) Water service.
- (3) Steam service.
- (4) Sewage service.
- (5) Natural gas service.

(b) Contracting officers may modify the specification format referenced in paragraph (a) of this section and attach technical items, details on Government ownership of facilities and maintenance or repair obligations, maps or drawings of delivery points, and other information deemed necessary to fully define the service conditions.

(c) The specifications and attachments (see paragraph (b) of this section) shall be inserted in Section C of the utility service solicitation and contract.

### **41.702 Formats for annual utility service review.**

- (a) Formats for use in conducting annual reviews of the following utility services are available from the address specified at 41.301 (a) and may be used at the agency's discretion:

- (1) Electric service.
- (2) Gas service.
- (3) Water and sewage service.

(b) Contracting officers may modify the annual utility service review format as necessary to fully cover the service used.

*Executive Order 13123*

## **Greening the Government through Efficient Energy Management**

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By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95-619, 92 Stat. 3206, 42 U.S.C. 8252 et seq.), as amended by the Energy Policy Act of 1992 (EPAAct) (Public Law 102-486, 106 Stat. 2776), and section 301 of title 3, United States Code, it is hereby ordered as follows:

### **Part 1 — Preamble**

Section 101. Federal Leadership. The Federal Government, as the Nation's largest energy consumer, shall significantly improve its energy management in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change. With more than 500,000 buildings, the Federal Government can lead the Nation in energy efficient building design, construction, and operation. As a major consumer that spends \$200 billion annually on products and services, the Federal Government can promote energy efficiency, water conservation, and the use of renewable energy products, and help foster markets for emerging technologies. In encouraging effective energy management in the Federal Government, this order builds on work begun under EPAAct and previous Executive orders.

### **Part 2 — Goals**

Sec. 201. Greenhouse Gases Reduction Goal. Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by 30 percent by 2010 compared to such emissions levels in 1990. In order to encourage optimal investment in energy improvements, agencies can count greenhouse gas reductions from improvements in nonfacility energy use toward this goal to the extent that these reductions are approved by the Office of Management and Budget (OMB).



Sec. 202. Energy Efficiency Improvement Goals. Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding facilities covered in section 203 of this order, by 30 percent by 2005 and 35 percent by 2010 relative to 1985. No facilities will be exempt from these goals unless they meet new criteria for exemptions, to be issued by the Department of Energy (DOE).

Sec. 203. Industrial and Laboratory Facilities. Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable by 20 percent by 2005 and 25 percent by 2010 relative to 1990. No facilities will be exempt from these goals unless they meet new criteria for exemptions, as issued by DOE.

Sec. 204. Renewable Energy. Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. In support of the Million Solar Roofs initiative, the Federal Government shall strive to install 2,000 solar energy systems at Federal facilities by the end of 2000, and 20,000 solar energy systems at Federal facilities by 2010.

Sec. 205. Petroleum. Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum within its facilities. Agencies may accomplish this reduction by switching to a less greenhouse gas-intensive, nonpetroleum energy source, such as natural gas or renewable energy sources; by eliminating unnecessary fuel use; or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

Sec. 206. Source Energy. The Federal Government shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In such cases, agencies will receive credit toward energy reduction goals through guidelines developed by DOE.

Sec. 207. Water Conservation. Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under section 503(f) of this order. Where possible, water cost savings and associated energy cost savings shall be included in Energy Savings Performance Contracts and other financing mechanisms.

### **Part 3 — Organization And Accountability**

Sec. 301. Annual Budget Submission. Each agency's budget submission to OMB shall specifically request funding necessary to achieve the goals of this order. Budget submissions shall include the costs associated with encouraging the use of, administering, and fulfilling agency responsibilities under Energy Savings Performance Contracts,

utility energy-efficiency service contracts, and other contractual platforms for achieving conservation goals; implementing life-cycle cost-effective measures; procuring life-cycle cost-effective products; and constructing sustainably designed new buildings, among other energy costs. OMB shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products. OMB shall explore the feasibility of establishing a fund that agencies could draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs. Budget requests to OMB in support of this order must be within each agency's planning guidance level.

Sec. 302. Annual Implementation Plan. Each agency shall develop an annual implementation plan for fulfilling the requirements of this order. Such plans shall be included in the annual reports to the President under section 303 of this order.

Sec. 303. Annual Reports to the President. (a) Each agency shall measure and report its progress in meeting the goals and requirements of this order on an annual basis. Agencies shall follow reporting guidelines as developed under section 306(b) of this order. In order to minimize additional reporting requirements, the guidelines will clarify how the annual report to the President should build on each agency's annual Federal energy reports submitted to DOE and the Congress. Annual reports to the President are due on January 1 of each year beginning in the year 2000.

(b) Each agency's annual report to the President shall describe how the agency is using each of the strategies described in Part 4 of this order to help meet energy and greenhouse gas reduction goals. The annual report to the President shall explain why certain strategies, if any, have not been used. It shall also include a listing and explanation of exempt facilities.

Sec. 304. Designation of Senior Agency Official. Each agency shall designate a senior official, at the Assistant Secretary level or above, to be responsible for meeting the goals and requirements of this order, including preparing the annual report to the President. Such designation shall be reported by each Cabinet Secretary or agency head to the Deputy Director for Management of OMB within 30 days of the date of this order. Designated officials shall participate in the Interagency Energy Policy Committee, described in section 306(d) of this order. The Committee shall communicate its activities to all designated officials to assure proper coordination and achievement of the goals and requirements of this order.

Sec. 305. Designation of Agency Energy Teams. Within 90 days of the date of this order, each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and technical representatives to expedite and encourage the agency's use of appropriations, Energy Savings Performance Contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this order. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the Interagency Energy Management Task Force, as described in section 306(e) of this order.

## Sec. 306. Interagency Coordination.

(a) Office of Management and Budget. The Deputy Director for Management of OMB, in consultation with DOE, shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the President to report progress.

(1) OMB, in consultation with DOE and other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this order. The scoring criteria shall include the extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as Energy Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, renewable energy technologies, electricity from renewable energy sources, and other strategies and requirements listed in Part 4 of this order, as well as overall efficiency and greenhouse gas metrics and use of other innovative energy efficiency practices. The scorecards shall be based on the annual energy reports submitted to the President under section 303 of this order.

(2) The Deputy Director for Management of OMB shall also select outstanding agency energy management team(s), from among candidates nominated by DOE, for a new annual Presidential award for energy efficiency.

(b) Federal Energy Management Program. The DOE's Federal Energy Management Program (FEMP) shall be responsible for working with the agencies to ensure that they meet the goals of this order and report their progress. FEMP, in consultation with OMB, shall develop and issue guidelines for agencies' preparation of their annual reports to the President on energy management, as required in section 303 of this order. FEMP shall also have primary responsibility for collecting and analyzing the data, and shall assist OMB in ensuring that agency reports are received in a timely manner.

(c) President's Management Council. The President's Management Council (PMC), chaired by the Deputy Director for Management of OMB and consisting of the Chief Operating Officers (usually the Deputy Secretary) of the largest Federal departments and agencies, will periodically discuss agencies' progress in improving Federal energy management.

(d) Interagency Energy Policy Committee. This Committee was established by the Department of Energy Organization Act. It consists of senior agency officials designated in accordance with section 304 of this order. The Committee is responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies designated by DOE are required to participate in the Committee. The Committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this order.

(e) Interagency Energy Management Task Force. The Task Force was established by the National Energy Conservation Policy Act. It consists of each agency's chief energy manager. The Committee shall continue to work toward improving agencies' use of energy management tools and sharing information on Federal energy management across agencies.

Sec. 307. Public/Private Advisory Committee. The Secretary of Energy will appoint an advisory committee consisting of representatives from Federal agencies, State governments, energy service companies, utility companies, equipment manufacturers, construction and architectural companies, environmental, energy and consumer groups, and other energy-related organizations. The committee will provide input on Federal energy management, including how to improve use of Energy Savings Performance Contracts and utility energy-efficiency service contracts, improve procurement of ENERGY STAR® and other energy efficient products, improve building design, reduce process energy use, and enhance applications of efficient and renewable energy technologies at Federal facilities.

Sec. 308. Applicability. This order applies to all Federal departments and agencies. General Services Administration (GSA) is responsible for working with agencies to meet the requirements of this order for those facilities for which GSA has delegated operations and maintenance authority. The Department of Defense (DOD) is subject to this order to the extent that it does not impair or adversely affect military operations and training (including tactical aircraft, ships, weapons systems, combat training, and border security).

#### **Part 4 — Promoting Federal Leadership in Energy Management**

Sec. 401. Life-Cycle Cost Analysis. Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the Federal Government's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects. Agencies shall also retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs with efficiency measures will be recognized in their scorecard evaluations.

Sec. 402. Facility Energy Audits. Agencies shall continue to conduct energy and water audits for approximately 10 percent of their facilities each year, either independently or through Energy Savings Performance Contracts or utility energy-efficiency service contracts.

Sec. 403. Energy Management Strategies and Tools. Agencies shall use a variety of energy management strategies and tools, where life-cycle cost-effective, to meet the goals of this order. An agency's use of these strategies and tools shall be taken into account in assessing the agency's progress and formulating its score card.

(a) Financing Mechanisms. Agencies shall maximize their use of available alternative financing contracting mechanisms, including Energy Savings Performance Contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy Savings Performance Contracts, which are authorized under the National Energy Conservation Policy Act, as modified by the Energy Policy Act of 1992, and utility energy-efficiency service contracts provide significant opportunities for making Federal facilities more energy efficient at no net cost to taxpayers.

(b) ENERGY STAR® and Other Energy-Efficient Products.

- (1) Agencies shall select, where life-cycle cost-effective, ENERGY STAR® and other energy-efficient products when acquiring energy-using products. For product groups where ENERGY STAR® labels are not yet available, agencies shall select products that are in the upper 25 percent of energy efficiency as designated by FEMP. The Environmental Protection Agency (EPA) and DOE shall expedite the process of designating products as ENERGY STAR® and will merge their current efficiency rating procedures.
- (2) GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, shall create clear catalogue listings that designate these products in both print and electronic formats. In addition, GSA and DLA shall undertake pilot projects from selected energy-using products to show a "second price tag," which means an accounting of the operating and purchase costs of the item, in both printed and electronic catalogues and assess the impact of providing this information on Federal purchasing decisions.
- (3) Agencies shall incorporate energy-efficient criteria consistent with ENERGY STAR® and other FEMP- designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for Basic Ordering Agreements, Blanket Purchasing Agreements, Government Wide Acquisition Contracts, and all other purchasing procedures.
- (4) DOE and OMB shall also explore the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products. Within 9 months of the date of this order, DOE shall report back to the President's Management Council on the viability of such alternative financing options.

(c) ENERGY STAR® Buildings. Agencies shall strive to meet the ENERGY STAR® building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by the end of 2002. Agencies may use Energy Savings Performance Contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to buildings in order to meet the criteria. Buildings that rank in the top 25 percent in energy efficiency relative to comparable commercial and Federal buildings will

receive the ENERGY STAR® building label. Agencies shall integrate this building rating tool into their general facility audits.

(d) Sustainable Building Design. DOD and GSA, in consultation with DOE and EPA, shall develop sustainable design principles. Agencies shall apply such principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using Energy Savings Performance Contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(e) Model Lease Provisions. Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies shall include a preference for buildings having the ENERGY STAR® building label in their selection criteria for acquiring leased buildings. In addition, all agencies shall encourage lessors to apply for the ENERGY STAR® building label and to explore and implement projects that would reduce costs to the Federal Government, including projects carried out through the lessors' Energy Savings Performance Contracts or utility energy-efficiency service contracts.

(f) Industrial Facility Efficiency Improvements. Agencies shall explore efficiency opportunities in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching, including cogeneration and other efficiency and renewable energy technologies.

(g) Highly Efficient Systems. Agencies shall implement district energy systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power when upgrading and assessing facility power needs and shall use combined cooling, heat, and power systems when life-cycle cost-effective. Agencies shall survey local natural resources to optimize use of available biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(h) Off-Grid Generation. Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

Sec. 404. Electricity Use. To advance the greenhouse gas and renewable energy goals of this order, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing

electricity from efficient and renewable energy sources shall be taken into account in assessing the agency's progress and formulating its scorecard.

(a) **Competitive Power.** Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

(b) **Reduced Greenhouse Gas Intensity of Electric Power.** When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

(c) **Purchasing Electricity from Renewable Energy Sources.**

(1) Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the President. Based on this review, each agency should adopt policies and pursue projects that increase the use of such electricity. Agencies should include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

(2) In evaluating opportunities to comply with this section, agencies should consider my Administration's goal of tripling non-hydroelectric renewable energy capacity in the United States by 2010 the renewable portfolio standard specified in the restructuring guidelines for the State in which the facility is located, GSA's efforts to make electricity from renewable energy sources available to Federal electricity purchasers, and EPA's guidelines on crediting renewable energy power in implementation of Clean Air Act standards.

**Sec. 405. Mobile Equipment.** Each agency shall seek to improve the design, construction, and operation of its mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

**Sec. 406. Management and Government Performance.** Agencies shall use the following management strategies in meeting the goals of this order.

(a) **Awards.** Agencies shall use employee incentive programs to reward exceptional performance in implementing this order.

(b) **Performance Evaluations.** Agencies shall include successful implementation of provisions of this order in areas such as Energy Savings Performance Contracts,

sustainable design, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects in the position descriptions and performance evaluations of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees.

(c) Retention of Savings and Rebates. Agencies granted statutory authority to retain a portion of savings generated from efficient energy and water management are encouraged to permit the retention of the savings at the facility or site where the savings occur to provide greater incentive for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources.

(d) Training and Education. Agencies shall ensure that all appropriate personnel receive training for implementing this order.

(1) DOE, DOD, and GSA shall provide relevant training or training materials for those programs that they make available to all Federal agencies relating to the energy management strategies contained in this order.

(2) The Federal Acquisition Institute and the Defense Acquisition University shall incorporate into existing procurement courses information on Federal energy management tools, including Energy Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy-efficient products, and life-cycle cost analysis.

(3) All agencies are encouraged to develop outreach programs that include education, training, and promotion of ENERGY STAR® and other energy-efficient products for Federal purchase card users. These programs may include promotions with billing statements, user training, catalogue awareness, and exploration of vendor data collection of purchases.

(e) Showcase Facilities. Agencies shall designate exemplary new and existing facilities with significant public access and exposure as showcase facilities to highlight energy or water efficiency and renewable energy improvements.

## **Part 5 — Technical Assistance**

Sec. 501. Within 120 days of this order, the Director of OMB shall:

- (a) Develop and issue guidance to agency budget officers on preparation of annual funding requests associated with the implementation of the order for the FY 2001 budget;
- (b) In collaboration with the Secretary of Energy, explain to agencies how to retain savings and reinvest in other energy and water management projects; and



(c) In collaboration with the Secretary of Energy through the Office of Federal Procurement Policy, periodically brief agency procurement executives on the use of Federal energy management tools, including Energy Savings Performance Contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

Sec. 502. Within 180 days of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

- (a) Issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other applicable unit in industrial, laboratory, research, and other energy-intensive facilities;
- (b) Establish criteria for determining which facilities are exempt from the order. In addition, DOE must provide guidance for agencies to report proposed exemptions;
- (c) Develop guidance to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after 1990 in order to measure progress toward goals;
- (d) Issue guidance to clarify how agencies determine the life-cycle cost for investments required by the order, including how to compare different energy and fuel options and assess the current tools;
- (e) Issue guidance for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases; and
- (f) Provide guidance to assist each agency to determine a baseline of water consumption.

Sec. 503. Within 1 year of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

- (a) Provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;
- (b) Develop goals for the amount of energy generated at Federal facilities from renewable energy technologies;
- (c) Support efforts to develop standards for the certification of low environmental impact hydropower facilities in order to facilitate the Federal purchase of such power;
- (d) Work with GSA and DLA to develop a plan for purchasing advanced energy products in bulk quantities for use in by multiple agencies;

(e) Issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use. These guidelines shall include emissions associated with the production, transportation and use of energy consumed in Federal facilities; and

(f) Establish water conservation goals for Federal agencies.

Sec. 504. Within 120 days of this order, the Secretary of Defense and the Administrator of GSA, in consultation with other agency heads, shall develop and issue sustainable design and development principles for the siting, design, and construction of new facilities.

Sec. 505. Within 180 days of this order, the Administrator of GSA, in collaboration with the Secretary of Defense, the Secretary of Energy, and other agency heads, shall:

(a) Develop and issue guidance to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and renovation of facilities are based on life-cycle costs. Incentives for contractors involved in facility design and construction must be structured to encourage the contractors to design and build at the lowest life-cycle cost;

(b) Make information available on opportunities to purchase electricity from renewable energy sources as defined by this order. This information should accommodate relevant State regulations and be updated periodically based on technological advances and market changes, at least every 2 years;

(c) Develop Internet-based tools for both GSA and DLA customers to assist individual and agency purchasers in identifying and purchasing ENERGY STAR® and other energy-efficient products for acquisition; and

(d) Develop model lease provisions that incorporate energy efficiency and sustainable design.

## **Part 6 — General Provisions**

Sec. 601. Compliance by Independent Agencies. Independent agencies are encouraged to comply with the provisions of this order.

Sec. 602. Waivers. If an agency determines that a provision in this order is inconsistent with its mission, the agency may ask DOE for a waiver of the provision. DOE will include a list of any waivers it grants in its Federal Energy Management Program annual report to the Congress.

Sec. 603. Scope. (a) This order is intended only to improve the internal management of the Executive branch and is not intended to create any right, benefit, or trust

responsibility, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to agency facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Agencies with facilities outside of these areas, however, are encouraged to make best efforts to comply with the goals of this order for those facilities. In addition, agencies can report energy improvements made outside the United States in their annual report to the President; these improvements may be considered in agency scorecard evaluations.

Sec. 604. Revocations. Executive Order 12902 of March 9, 1994, Executive Order 12759 of April 17, 1991, and Executive Order 12845 of April 21, 1993, are revoked.

Sec. 605. Amendments to Federal Regulations. The Federal Acquisition Regulation and other Federal regulations shall be amended to reflect changes made by this order, including an amendment to facilitate agency purchases of electricity from renewable energy sources.

## **Part 7 — Definitions**

For the purposes of this order:

Sec. 701. "Acquisition" means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Sec. 702. "Agency" means an Executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of DOD.

Sec. 703. "Energy Savings Performance Contract" means a contract that provides for the performance of services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations. Such contracts shall provide that the contractor must incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract. Payment to the

contractor is contingent upon realizing a guaranteed stream of future energy and cost savings. All additional savings will accrue to the Federal Government.

Sec. 704. "Exempt facility" or "Exempt mobile equipment" means a facility or a piece of mobile equipment for which an agency uses DOE-established criteria to determine that compliance with the Energy Policy Act of 1992 or this order is not practical.

Sec. 705. "Facility" means any individual building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, including the associated energy- or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government. It includes leased facilities where the Federal Government has a purchase option or facilities planned for purchase. In any provision of this order, the term "facility" also includes any building 100 percent leased for use by the Federal Government where the Federal Government pays directly or indirectly for the utility costs associated with its leased space. The term also includes Government-owned contractor-operated facilities.

Sec. 706. "Industrial facility" means any fixed equipment, building, or complex for production, manufacturing, or other processes that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the water heating energy load requirements of the facility.

Sec. 707. "Life-cycle costs" means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure. Additional guidance on measuring life-cycle costs is specified in 10 C.F.R. 436.19.

Sec. 708. "Life-cycle cost-effective" means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 C.F.R. 436.18 (a), (b), and (c), 436.20, and 436.21.

Sec. 709. "Mobile equipment" means all Federally owned ships, aircraft, and nonroad vehicles.

Sec. 710. "Renewable energy" means energy produced by solar, wind, geothermal, and biomass power.

Sec. 711. "Renewable energy technology" means technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term also means the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

Sec. 712. "Source energy" means the energy that is used at a site and consumed in producing and in delivering energy to a site, including, but not limited to, power

generation, transmission, and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting or water heating.

Sec. 713. "Utility" means public agencies and privately owned companies that market, generate, and/or distribute energy or water, including electricity, natural gas, manufactured gas, steam, hot water, and chilled water as commodities for public use and that provide the service under Federal, State, or local regulated authority to all authorized customers. Utilities include Federally owned nonprofit producers, municipal organizations, and investor or privately owned producers regulated by a State and/or the Federal Government; cooperatives owned by members and providing services mostly to their members; and other nonprofit State and local government agencies serving in this capacity.

Sec. 714. "Utility energy-efficiency service" means demand-side management services provided by a utility to improve the efficiency of use of the commodity (electricity, gas, etc.) being distributed. Services can include, but are not limited to, energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

William J. Clinton

The White House,  
June 3, 1999

# Legal Opinions

## **Authority for Extended Utility Agreements**

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*May 9, 2000, Memorandum from Richard Butterworth, General Services Administration*



U.S. General Services Administration  
Office of General Counsel

*May 9, 2000*

MEMORANDUM FOR

Mark V. Ewing  
Director  
Energy Center Of Expertise

Virgil W. Ostrander  
*Director*  
Public Utilities

FROM:

Richard R. Butterworth, Jr.  
Senior Assistant General Counsel  
Real Property Division (Lr)

SUBJECT:

Authority for Extended Utility Agreements

The General Services Administration (GSA) is making a concerted effort to reduce its energy consumption. In order to reach its energy conservation goals, GSA has been evaluating a number of contracting options for energy management and demand-side management. Some of the measures being contemplated have payback periods over ten (10) years. It is clear that GSA has ten-year contracting authority for utility services under the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. Sec. 481(a)(3). You have asked, however, if GSA has the authority to enter into energy management contracts that extend beyond ten years. I believe GSA does have this authority.

The Office of General Counsel has issued a number of opinions that deal with this matter. Most recently, I issued an opinion to Ed Loeb, Director, Federal Acquisition Policy Division. In that memorandum, I stated that FAR Part 41 was not limited to regulated monopolistic utility services and could be applied to any company that provided services within the broad definition of "utility services." Further, I concluded that demand-side management or energy management services could be acquired as utility services under FAR Part 41. See Attachment A, Memorandum of Richard Butterworth, April 21, 1999.

As part of that opinion, I reference an earlier opinion issued by this office on the application of the Anti-Deficiency Act. Obviously, contracts entered into under the authority of 40



U.S.C. Sec. 481 (i.e., ten-year contracts) do not need to be funded up front, and contracts under 42 U.S.C. Sec. 8287 are specifically exempted from the requirement to fund cancellation charges. Therefore, contracts under these two authorities do not violate the Anti-Deficiency Act where there is only year-to-year funding.

The final area of concern is contracts that are entered under the authority of 42 U.S.C. Sec. 8256. This provision authorizes Federal agencies to enter contracts with utilities for energy conservation, accepting “financial incentives, goods, or services,” 41 U.S.C. Sec. 8256(c)(2). According to the legislative history of this provision, Congress contemplated that agencies would be permitted to participate in utility incentive programs “to the same extent permitted other customers of the utility,” H.R. Rep. No. 474(V), 102d Cong., 2d Sess. 42 (1992), reprinted in 1992 U.S.C.C.A.N. 2224. Therefore, to the extent a utility offers financing and multi-year contracting to its other customers, GSA may avail itself of these programs. Such agreements must be pursuant to a utility incentive program, must increase energy efficiency, and must be generally available to other customers of the utility. However, this provision does not indicate any limitation on the term of such agreements or contracts.

In a memorandum dated July 24, 1994, Harmon Eggers of this office reviewed the authority granted in 42 U.S.C. Sec. 8256. In reviewing this authority, he determined that the broad authority contained therein constitutes “contract authority,” which is “a form of budget authority that permits contracts and other obligations to be entered into in advance of an appropriate or in excess of amounts otherwise available in a revolving fund.” U.S. General Accounting Office, Principles of Federal Appropriations Law 2-4 to 2-6 (2d Ed. 1991). Therefore, 42 U.S.C. Sec. 8256 operates much the same as 40 U.S.C. Sec. 481 by granting multi-year authority; however, unlike 40 U.S.C. Sec. 481, 42 U.S.C. Sec. 8256 contracts are not limited to a certain number of years. In fact, the contract under review in the 1994 memorandum had a 14-year term. See Attachment B.

In conclusion, I believe 42 U.S.C. Sec. 8256 grants GSA multi-year contracting authority separate and apart from the ten-year authority in the Property Act. Therefore, I believe GSA is authorized to enter contracts as part of utility incentive programs for terms greater than ten years. For the same reasons that contracts entered under 40 U.S.C. Sec. 481 are not subject to the Anti-Deficiency Act, agreements reach under 42 U.S.C. Sec. 8256 are also not subject to the Act.

## **Relationship of the Anti-Deficiency Act to Multi-year Contracts**

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*June 22, 1999, Memorandum from Mark S. Schwartz, Department of Energy*



Department of Energy  
Washington, DC 20585

June 22, 1999

MEMORANDUM FOR: Shelley N. Fidler  
*Acting Director*  
*Federal Energy Management Program*

FROM: Mark S. Schwartz  
Deputy General Counsel for Energy Policy

SUBJECT: Relationship of the Anti-Deficiency Act to Multi-year Contracts Under the  
Utility Incentive Program Authorized Under Section 152(f) of EPAct

## I. BACKGROUND

The Department of Energy's (Department) Federal Energy Management Program (FEMP) is assisting federal agencies in improving energy and water efficiency to meet the goals of the Energy Policy Act of 1992 (EPAct), Pub. L. No. 102-486 (1992) (codified as amended in scattered sections of Title 42 of the U.S. Code) and Executive Order 13123. Because of the inability of Federal agencies to obtain appropriated funding for Federal building energy-efficiency and water conservation projects, one of the primary goals of FEMP is the implementation of the demand side management (DSM) and energy and water conservation and efficiency projects through utility services contracts and energy savings performance contracts. FEMP has requested our views as to whether and to what extent the authority provided to Federal agencies under section 152(f) of EPAct, which amends section 546 of the National Energy Conservation Policy Act, 42 U.S.C. 8256(c)(1997), is constrained by the Anti-Deficiency Act, 31 U.S.C. 1341 (1998) and whether contracts under section 152(f) also qualify as "public utility services" contracts under section 201 of the Federal Property and Administrative Services Act of 1949, as amended (Federal Property Act), 40 U.S.C. §481(a)(3) (1997), which are eligible for a ten-year term.

FEMP's inquiry is directed to whether Federal agencies are required to obligate the entire contract amount, or amounts for termination costs, under DSM and energy and water conservation and efficiency contracts. This sort of obligational requirement would in FEMP's view negate the purpose of section 152(f)<sup>1</sup>, which is to make utility incentives available to federal agencies on the same basis as they are available to other customers. The up to ten-year contract term available for "contracts for public utility services" under section 201 of the Federal Property Act is needed to make these projects economically viable.

## II. QUESTION

You have requested our views on whether DSM and energy and water conservation and efficiency contracts entered into with utilities under section 152(f) of EPAct are "contracts for public utility services" under section 201 of the Federal Property Act, and thus can have both a ten-year contract term and an exemption from the full funding requirements of the Anti-Deficiency Act, 31 U.S.C. §1341 (1998).

## III. CONCLUSION

DSM and energy and water conservation and efficiency contracts authorized by section 152(f) of EPAct can qualify as "contracts for public utility services" under section 201 of the Federal Property Act, if the services and goods provided meet the requirements for "utility services." As public utility service contracts they are not subject to the requirement that funds must be obligated for expenses (including potential termination costs) beyond the first year, and the contracts can have up to a ten-year term. In order to facilitate your implementation of this conclusion, we have prepared model agreements that reflect the kinds of energy conservation measures that we conclude are properly categorized as "public utility services."

## IV. DISCUSSION

Section 201(a)(3) of the Federal Property Act authorizes the General Services Administration (GSA) to enter into contracts for public utility services for periods not exceeding 10 years. It was enacted to effect economies in the procurement of such services<sup>2</sup>. Use of section 201 presupposes the availability of a fiscal year appropriation for the first year and that the services to be rendered are merely incidental to the conduct of authorized government business. Section 201(a) of the Federal Property Act provides, in part, as follows:

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<sup>1</sup> Contracts under section 152(f) of EPACT are contracts with utilities under utility incentive programs (UIPs) offered by utilities. Each agency may accept any financial incentives, goods, or services "generally available to customers of such utility." *Id.* An agency, therefore, must satisfy "the criteria which generally apply to other customers" under a UIP. Finally, an amount equal to fifty percent of the agency's savings may be retained by the agency for additional energy efficiency measures. *Id.*

<sup>2</sup> GSA has delegated to DOE certain authority to enter into contracts for utility services<sup>2</sup> for periods not to exceed ten-years. Delegation of Authority to the Secretary of Energy, signed by Brian K. Polly, Assistant Commissioner, Office of Procurement, Public Buildings Service, General Services Administration, dated February 12, 1987. See FAR §41.103(a)(3), 48 C.F.R. §41.103(b)(1998) (referencing the delegation).

The Administrator shall .... (3) procure and supply personal property and nonpersonal services for the use of executive agencies in the proper discharge of their responsibilities, and perform functions related to procurement and supply such as those mentioned above in subparagraph (1) of this subsection: Provided, That contracts for public utility services may be made for periods not exceeding ten years...

Federal Property Act, §201(a)(3) (emphasis added).

A. What are “public utility services”?

DSM and energy and water conservation and efficiency services are measures implemented or accomplished through specific projects intended and designed to achieve savings in the cost of energy and water, reduce demand for energy and water, and achieve energy efficiency improvements and water conservation. These measures are called Energy Conservation Measures (ECMs). The construction or installation of ECMs and other energy savings measures in government, commercial, industrial or residential dwellings is an important and integral part of planning and predicting power capacity needs in the future. While these contracts often involve the installation of equipment or refurbishing existing equipment, with a strong service component, these ECMs and similar efforts are extremely important to the modern utility as a valuable means of reducing or slowing the growth of demand for water, gas and electric services. These measures affect how much new capacity must be constructed or acquired and ultimately the cost of utility services to the rate payer. State public utility commissions have been encouraging utilities to reduce demand through energy conservation in order to reduce the cost involved in the construction or acquisition of new power capacity<sup>3</sup>.

The Federal Property Act does not provide a definition of “public utility services.” The phrase is used in various states’ laws, in the context of comprehensive regulation of the provision of public utility services. However, the term does not have a common definitive meaning:

“A ‘public utility’ has been described as a business organization which regularly supplies the public with some commodity or service, such as electricity, gas, water, transportation, or telephone or telegraph service. While the term has not been exactly defined, and as has been said, it would be difficult to construct a definition that would fit every conceivable

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<sup>3</sup> States, through statutes, regulations, and the actions of their public utility commissions, have been encouraging utilities to reduce demand through energy conservation in order to reduce the cost involved in the construction or acquisition of new power capacity. E.g., Indiana Admin. Code, Title 170. Indiana Utility Regulatory Comm., Art. 4, Rule 7, 6(b) (describing demand side management as a new source of utility supply); Texas Admin. Code, Title 16. Part II, chap. 23, subchapter D. §23.31(a)(5) (requiring electric utilities to attempt to reduce total demand before applying for a certificate for a new generating unit). EPACT included amendments to the Public Utility Regulatory Policies Act to ensure that utilities could regard investments in demand side management and energy conservation as equally profitable with investments in increased generating capacity. EPACT §111(a), amending 16 U.S.C. §2621; EPACT §115, amending 15 U.S.C. §§3202-03. These developments both demonstrate that engaging in energy conservation and demand management have become viewed as a means of providing utility services to the public.

case, the distinguishing characteristic of a public utility is the devotion of private property by the owner or person in control thereof to such a use that the public generally, or that part of the public which has been served and has accepted the service, has the right to demand that the use or services, as long as it is continued, shall be conducted with reasonable efficiency and under proper charges.”

73B C.J.S. Public Utilities §2 (1997); see also 64 AM. Jur. 2 Public Utilities §1 (1997).<sup>nd</sup>

The General Accounting Office (GAO) has had few occasions to address the parameters of this phrase in the context of the Federal Property Act. GAO has declined to limit the definition of public utility to that used by a particular state:

The status of the Pipeline Company as a public utility under Title 42 of the Alaska Statutes is, in our opinion, doubtful. We are of this view because the company is not subject to regulatory control and because it has not served the public generally with natural gas. But the Congress has authorized long-term contracting in the case of services having public utility aspects. In doing so the Congress did not require that these public utility services be procured only from those firms which clearly come within the strict legal definition of a public utility. Perhaps in recognition of the legal imponderable involved in the application and enforcement of State laws regulating public utilities, and in view of the diversity of opinions between various jurisdictions respecting the legal character of public utilities, the Congress in its judgment determined to categorize the service rather than the contractor.

45 Comp Gen. 59, 64 (1965). “Thus, it is the nature of the product or service provided and not the nature of the provider of the product or services that may determine what are “public utility services.” Moreover, GAO has indicated its view that the phrase “public utility services” should be interpreted broadly: “[T]he concept of what product or service constitutes a public utility service is not static for the purpose of statutory construction, but instead is flexible and adaptive, permitting statutes to be construed in light of the changes in technologies and methodologies for providing the product or service.” 62 Comp. Gen. 569, 575 (1983).

We have concluded that the fact that ECM and DSM services involve transferring title to equipment does not defeat their character as “public utility services.” 62 Comp. Gen. 569, 574 (1983). Where a contract was for the procurement of telephone equipment as well as telephone services, the Comptroller General decided that it was a contract for public utility services under section 201 of the Federal Property Act. The Comptroller General stated the following views on what are “public utility services”:

Further, while public utilities are generally described as providing services, we think that the concept of utility services can include the sale of a product or equipment as well as providing services in the literal sense.

Id. The Comptroller General concluded as follows:

On the basis of these fundamental premises, we think that the sale of telephone equipment or facilities with related services is a public utility type service just as much as leasing the equipment to the Government at a rental designed to recover the cost of the contractor's investment in facilities and equipment over the life of the rental agreement would be. The only difference between the two is that in the former case the Government acquires title to the system while in the latter, title remains with the utility. Thus the nature of service is virtually identical, and in any case, the difference is not so fundamental as to warrant its exclusion from the scope of transactions to which the authority of [section 201] applies.

Id. Even, however, if it is concluded that "qualified" DSM and ECM contracts entered into under section 152(f) of EPAct, standing alone, are not contracts to provide public utility services, these contracts would be contracts incidental to "contracts for public utility services." For instance, it has consistently been GSA's view that equipment provided with telephone services is incidental to those services:

It has been the position of GSA that the contracts which we enter into for telephone services are public utility services contracts regardless of whether the successful offeror was a tariffed carrier or an interconnect company. GSA has viewed the equipment involved in telecommunications procurement as incidental to the services. ....

....

GSA has historically regarded the equipment provided with telephone services as an incidental but necessary element of the services. Thus, we have always considered the acquisition of equipment as falling within the meaning of contracts for public utility services.

....

Whether the service is provided by utility-owned equipment or Government-owned equipment does not change the nature of the services.

62 Comp. Gen. 569, 573-74 (1983).

Similarly, the equipment or products installed in federal buildings as DSMs or ECMs are necessary to reduce energy and water consumption, reduce the cost of energy and water and insure the adequate delivery of electric, gas, or water services and is incident to those services. The ability to plan, measure and reduce electric, gas and water consumption in the future is an important part of providing utility services. Moreover, reducing the long term cost of energy to the federal government was the specific reason why Congress included section 201 in the Federal Property Act. Therefore, so long as the dominant or primary purpose of the project is to reduce energy and water use or demand, and there is a direct connection between any equipment (or services) to be provided and achievement of the dominant or primary purpose, it should not matter whether the ECM or DSM activities include the provision of equipment, title to which passes to the government.

In summary, contracts entered into under section 152(f) of EPAct may also be contracts for public utility services” under section 201(a)(3) of the Federal Property Act.

## B. GSA’s Views

While the Secretary of Energy has the authority to develop guidelines to implement section 152(f) of EPAct<sup>4</sup>, it is significant that GSA, the agency with primary responsibility and authority under section 201 of the Federal Property Act, has concluded in an opinion dated July 29, 1994 (“Exhibit A”), that certain DSM and ECM contracts entered into under section 152(f) of EPAct are contracts for “public utility services:”

In addition, GSA has authority under the Act to receive the goods and services contemplated under the proposed agreement with [the utility], including but not limited to, energy related equipment, its installation, and personnel training. 42 U.S.C. §8256(c)(2)-(4); 40 U.S.C. §490(f)(7)(B).

The expenditure of the funds as contemplated by the proposed agreement with {the utility} is necessary for and incidental to compliance with the energy conservation requirements of the Act, 42 U.S.C. §8253. Therefore, this constitutes a necessary and proper expense for utility services. ...

Likewise, in accordance with 42 U.S.C. §8256(c)[Section 152(f) of EPAct], Congress specifically has authorized agencies to participate in utility incentive programs conducted by utilities and generally available to customers of such utilities. Participation in such programs will provide one of the means for GSA to satisfy the energy performance requirements for Federal buildings mandated by Congress in 42 U.S.C. §8253. As explained above, the broad authority may be funded by GSA’s Real Property Operations (BA-61) appropriations as necessary and proper expenses for utility services. ...

GSA Op. Off. Real Property Division, 3-4, July 29, 1994 (emphasis added).

Finally, GSA has negotiated and entered into a series of “areawide” contracts with utilities to provide electric, gas and gas transportation services to Federal agencies<sup>5</sup>. In order to use an areawide contract any Federal agency in the defined geographic area simply has to execute an “authorization” agreement with the utility. The “areawide” contracts are entered into pursuant to GSA’s “utility services” authority provided under section 201(a)(3) of the Federal Property Act. GSA now includes some DSM and ECM services under the areawide

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<sup>4</sup> Section 152(c) of EPACT provides the Secretary of Energy with the authority to 4 develop “guidelines for the implementation” of the “Federal Energy Management” provisions of EPACT. 42 U.S.C. §8253(d) (1998).

<sup>5</sup> See, e.g., Areawide Public Utility Contract for Electric, Natural Gas, Gas 5 Transportation and Energy Management Services, Contract No. GS-00P-95-BSD-0008, between the United States of American and Public Service Company of New Mexico, August 23, 1995.



umbrella contracts. This is further evidence of GSA's view that DSM and ECM services may be "utility services" under section 201(a)(3).

C. What are the funding requirements for contracts for public utility services under section 201 of the Federal Property Act?

The Anti-Deficiency Act provides, in part, as follows:

An officer or employee of the United States Government or of the District of Columbia government may not-

- (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;
- (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law....

31 U.S.C. §1341 (emphasis added). The Anti-Deficiency Act prohibits an executive agency from making expenditures or incurring obligations in excess of available appropriations, and from making a contract or obligation for the payment of money in advance of appropriations. Thus, as a general rule, the cost of a contract must be fully funded at the time the Government enters into the contract. The Anti-Deficiency Act, however, provides that Congress can authorize Federal agencies to "contractually" obligate the Government without the availability of an existing appropriation. "Contract authority" is statutory authority specifically authorizing "an agency to enter into a contract in excess of, or prior to, enactment of the applicable appropriation." See, G.A.O., Principles of Federal Appropriations Law, Vol. II, Ch. 6-51 (1992).

Section 201(a)(3) of the Federal Property Act has been interpreted to provide "contract authority." This provision has been interpreted as providing authority to enter into contracts for a term of ten-years without obligating funds for the total cost of the contract at the time the contract is entered into:

The purpose of the proviso authorizing contracts for public utility services to be made for up to 10 years is to permit GSA to take advantage of discounts offered under long term contracts. If this provision is applicable, GSA need not have available to it budget authority to obligate the total estimated cost of the Centel contract but only sufficient budget authority to obligate its annual costs under the agreement.

As we have indicated above, GSA need not obligate the total estimated cost of the contract against the Fund, but only amounts necessary to cover it annual costs under the contract.

62 Comp. Gen. 569, 576 (1983) (emphasis added). Section 152(f) does not expressly provide authority to enter into ten-year contracts nor does it expressly provide an exception to the full funding requirements of the Anti-Deficiency Act. However, §152(f) contracts to the extent that they also constitute contracts for public utility services (under §201(a)(3) of the Federal

Property Act) only require obligation of the annual costs under the contract during each year the contract is in effect.

#### D. Qualified DSM Contracts

Concerns have been raised that entering into DSMs, ECMs or other energy savings contracts with utilities of the type contemplated by §152(f) of EPOA may in some cases result in providing goods and services that are not “utility services” under section 201 of the Federal Property Act. In order to alleviate these concerns and provide protections against misuse of the authority provided in section 152(f), we have concluded that only “qualified” DSM and ECM contracts will be designated “contracts for public utility services” under section 201 of the Federal Property Act. These qualifications will insure that the primary purpose of a DSM or ECM contract for “public utility services” will be to reduce energy and water cost and use. These requirements or qualifications are reflected in the attached GSA Areawide Agreement (Exhibit B) and the draft Civilian Model Utility Agreement (Exhibit C). Included in the requirements for “qualified” DSM or ECM contracts are the following requirements:

- (1) That the primary purpose of an ECM or DSM contract under section 152(f) must be to reduce the cost or use of energy and water and achieving greater energy efficiency [for example, DOE could not construct an entire new building to achieve or facilitate a programmatic objective under the guise of an ECM or DSM contract under section 152(f)];
- (2) That general construction, training courses, and the purchase of supplies or equipment not directly related to an ECM or DSM is not permissible under section 152(f) of EPOA;
- (3) That energy or water savings must be sufficient to pay all costs under a DSM or ECM contract; and
- (4) That ECMs or DSMs will not normally be used unless the net overall energy or water cost reduction can be demonstrated and verified.

Other restrictions and limitations on the use of ECM and DSM contracts are reflected in the attached model GSA Areawide contract and the Civilian Model Utility Agreement, which provide the necessary requirements and protections to “qualify” an ECM or DSM contract as a “contract for public utility services” under section 201 of the Federal Property Act. Proposed ECM or DSM contracts which contain terms or conditions that are materially different from those provided in Exhibits C and D create circumstances which require legal review by the Office of General Counsel.

Concur:

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Lawrence R. Oliver  
GC-72

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Maryann Shebek  
GC-80

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Gena E. Cadieux  
GC-61

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John A. Herrick  
Chief Counsel  
Golden Field Office

## **Definition of Demand Side Management Services**

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*December 17, 1998, Memorandum from Larry Oliver, Department of Energy*



Department of Energy  
Washington, DC 20585

December 17, 1998

MEMORANDUM TO: Mary Anne Sullivan

FROM: Larry Oliver

SUBJECT: Definition for Demand Side Management Services

In consultation with the Director of the Federal Energy Management Program (FEMP), DOE lawyers at the Golden Field Office and FEMP utility and ESPC experts at NREL, it was determined that Demand Side Management (DSM) is a concept that is no longer current. A more inclusive concept that is more consistent with section 152(f) of EPAct is "Utilities Incentives." In that regard FEMP proposes that the following definition be used:

Utility incentives are any financial incentives, goods, or services offered by the utility that achieve energy or water goals or utility and related cost savings at Federal building and facilities, including, but not limited to, rebates or incentives, advanced financing of project costs, design and implementation of utility related projects, energy management services, facilities alterations, installation of technologies and energy savings devices, water conservation devices, and renewables by the utilities, and operation and maintenance of utility, water, energy efficiency and demand management projects.

Not all types of utility incentives are included under DSM services. For instance, some homeowners may want energy efficiency equipment or products installed because of efficiencies important to the owners, as opposed to the utilities to reduce demand. Government agencies will not be able to enjoy a utility incentive unless there is a measured performance that achieves energy, water, utility cost and related cost savings at Federal buildings or facilities.

For comparison purposes, listed below are examples of other definitions of DSM services.

1. Definition found in several Security and Exchange Commission Rulemakings:

[A] broad range of activities relating to the business of energy management and demand-side management, including the following: Energy audits, facility design and process enhancements, construction, maintenance and installation of, and training client

personnel to operate, energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs, development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment, and general advice on programs. [Upon additional consideration, the commission has concluded that “energy conservation services” may not be broad enough to cover the types of activities intended to be exempted under this category. The term “energy management services” more accurately reflects the scope of the exempted activity.] (brackets added).

These rulemaking involve the exemption of acquisition by registered public-utility holding companies of securities of non-utility companies engaged in energy-related and gas-related activities under the Public Utility Holding company Act of 1935.

2. Executive Order 12902 dated March 10, 1994, Energy Efficiency and Water Conservation at Federal facilities.

Sec. 104. The term “demand side management” refers to utility-sponsored programs that increase energy efficiency and water conservation or the management of demand. The term includes load management techniques.

At our December 14 meeting an issue was raised regarding employee training or “conservation seminars” as being possible areas for “fraud, waste and abuse”. Our office, along with attorneys from the Golden Field Office, FEMP and the NREL contractors had substantial discussions today and yesterday to identify what the concern is. For instance, we don’t know if the concern is whether a certain percentage of a “Utility Incentive” program will involve training as it may, or whether the concern is that DOE employees will attend training seminars and the cost of the training will be treated as costs under “Public Utility Services Contracts.” The only written explanation of the concerns is provided in an updated memorandum written by GC-61:

The E.E. program will not benefit if it uses a broad definition of demand side management services that clearly should be considered “public utility services” such as utility conservation seminars, which nonetheless may be viewed as demand side management services. (emphasis added).

If the concern is “utility conservation seminars” or other employee training, we do not believe that this could happen unless there is deliberate fraud. The way the process works is that a utility offers a financial incentive to its customers. Federal agencies are encouraged to participate in the financial incentive offered on the same basis as other customers of the utility. The relevant provision of section 152(f) provides as follows:

“(c) UTILITY INCENTIVE PROGRAMS. – (1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

This provision is essentially composed of five elements. There must be a utility incentive program that: (1) provides utility service applicable to Federal buildings or facilities and (2) is available to other customers of the utility, and (3) increases energy efficiency or (4) increases water conservation, or (5) reduces the demand for gas, water or electricity. Use of the conjunctive “and” between elements 1 and 2 means that these elements must always be present in conjunction with elements 3, 4, and 5, singularly, in combination, or in the aggregate, before a Federal agency may participate in the utility incentive program. A conservation seminar, “or other training vehicle,” standing alone, will not qualify as a utility incentive.

Services provided at a “utility seminar” or other training vehicle would not qualify as public utility services under Section 152(f) of EPAct. Those concerns are not appropriate for section 152(f) contracts.

Finally, we are concerned about substantive changes in the application and scope of section 152(f) to cover only DSM services. The application of incentives under section 152(f) is clearly not limited to DSM services. Federal agencies may also negotiate with utilities “to design cost-effective conservation incentive programs to address the unique needs of facilities utilized by such agency.”

## **Statutory Exception from Competition in DSM Utility Contracts**

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*July 7, 1994, Memorandum from Anne Troy, Department of Energy*





Department of Energy  
Washington, DC 20585

July 7, 1994

*MEMORANDUM TO:* Mr. Philip Winter  
General Services Administration (GSA)

*THROUGH:* Mary Ann Masterson  
Deputy Assistant General Counsel for Procurement and  
Financial Assistance

*FROM:* Anne Troy  
Office of Procurement and Financial Assistance  
GS 61

*SUBJECT:* Statutory Exception From The Competition In Contracting  
Act's Full and Open Competition Requirement In Demand  
Side Management Utility Contracts

You asked for assistance in determining whether the language in § 152 of the Energy Policy Act, Public Law 102-458, (EPAAct) provides this agency with the authority to "sole source" utility service contracts to obtain demand side management (DSM) services. We conclude that the language contained in § 152 does meet the criteria of one exception to the Competition in Contracting Act of 1984 (CICA). CICA requires, with certain limited exceptions, full and open competition in government contracting. One of the exceptions to that requirement is contained in 41 U.S. C. § 253 (c) (5), which provides that a civilian agency may use other than competitive procedures when "a statute expressly authorizes or requires that the procurement be made . . . from a specified source." See also the Federal Acquisition Regulation, FAR 6.302-5 (a) (2).<sup>6</sup>

Section 152 of EPAAct provides as follows:

- (c) UTILITY INCENTIVE PROGRAMS – Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by

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<sup>6</sup> The Federal Acquisition Regulation requires that contracts awarded using this authority will be supported by a written Justification and Approval (J&A).

- (d) gas, water, or electric utilities and generally available to customers of such utilities.
- (2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.
- (3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.

Plain Language. In our opinion, § 152's plain language contains an express authorization for an agency to participate in DSM contracts and permits them to accept any financial incentive or to enter into negotiations regarding these incentive programs. This language appears to provide express authority for an agency to directly approach a utility concerning DSM services, including the capability to award a noncompetitive contract to that utility without the use of full and open competition.

Navy Concurrence. Moreover, of some significance, our opinion is shared by the Naval Facilities Engineering Command (NAVFAC) which, with the other military service departments, relies upon virtually identical language in the FY 93 Defense Authorization Act<sup>7</sup> (attachment 1) to obtain DSM services directly from gas or electric utilities. In a legal opinion (attachment 2) discussing this issue, the counsel from NAVFAC states, “. . . [c]hanges made to 10 U.S.C. 2865 by the FY 93 Defense Authorization Act . . . clearly authorize military departments to obtain DSM services directly from gas or electric utilities. . . . We need only execute a J&A citing 10 U.S.C. 2865 (d) (3) as authority. FAR 6.302-5 provides that full and open competition is not required where a statute expressly provides that an acquisition be made from a specified source, i.e., the servicing gas or electric utility.”

Statutory Intent. In a recent telephone conversation with the NAVFAC counsel who authored the attached opinion, he stated that NAVFAC continued to adhere to the above

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<sup>7</sup> Public Law 102-484 at section 2801, states:

- (d) The Secretary of Defense shall permit and encourage each military department . . . to participate in programs conducted by any gas or electric utility for the management of electricity demand or for energy conservation.
- (2) The Secretary may authorize any military installation to accept any financial incentive, goods, or service generally available from gas or electric utility, to adopt technologies and practices that the Secretary determines are cost effective for the Federal Government.
- (3) The Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

stated position and that a NAVFAC field office, SOUTHWESTDIV, had used the statutory exception to sole source a contract for DSM services from a San Diego utility. The counsel also reminded me that the language contained in EPAct had been purposefully adopted from the language in the Defense Authorization Act for the same reasons that the military services had earlier advocated, *i.e.*, they wanted broad authority to obtain DSM services from utilities without using time-consuming and complex competitive procurement procedures. As the counsel stated to me, the purpose of the language was to facilitate and ease the process. If read any other way, the provisions would serve no purpose since agencies are compelled to use competitive procedures in any case.

General Accounting Office Opinions. Lastly, we rely upon certain General Accounting Office (GAO) opinions which have interpreted the specified source exceptions and permitted agencies to use other than competitive procedures. For instance, in Monterey City Disposal Service, Inc., 85-2 CPD ¶ 261, *aff'd*, B-218624-2, B-218880.2, 85-2 DPD ¶ 306,<sup>8</sup> the Comptroller General concluded that the specified source exception to CICA was applicable where, under the Solid Waste Disposal Act, 42 U.S.C. § 6961, federal agencies were required to comply with local requirements respecting the control and abatement of solid waste “in the same manner, and to the same extent, as any person is subject to such requirements.” In that case, the city of Monterey required that all inhabitants of the city have their solid waste collected by the city’s franchise. The Navy argued that there was no express congressional intent in section 6961 of the Solid Waste Disposal Act to permit sole source contracting. The Comptroller General rejected this argument and appeared to rely primarily on interpreting the plain language of the Solid Waste Disposal Act.

If you have any further questions on this matter, please contact this office at 202-586-1900.

Attachments

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<sup>8</sup> The GAO opinion was affirmed in Parola V. Weinberger, 848 F.2d 956 (1988).

# Agency Guidance

## **Participation in Public Utility Sponsored Energy Conservation and Demand Side Management (EC/DSM) Programs**

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*Defense Energy Program Policy Memorandum (DEPPM) 94-1*



**OFFICE OF THE UNDER SECRETARY OF DEFENSE**

**3000 DEFENSE PENTAGON  
Washington, DC 20301-3000**

**Acquisition and  
Technology**

DUSD (ES/CI)

**DEFENSE ENERGY PROGRAM POLICY MEMORANDUM (DEPPM) 94-1**

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS,  
LOGISTICS & ENVIRONMENT)

ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS &  
ENVIRONMENT)

ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER,  
RESERVE AFFAIRS, INSTALLATIONS & ENVIRONMENT)

DIRECTOR, DEFENSE LOGISTICS AGENCY

DIRECTOR, DEFENSE COMMISSARY AGENCY

DIRECTOR, NATIONAL SECURITY AGENCY


DIRECTOR, DEFENSE MAPPING AGENCY

**SUBJECT: Participation in Public Utility Sponsored Energy  
Conservation and Demand Side Management (EC/DSM) Programs**

Deputy Secretary of Defense Memorandum on "Defense Facilities Energy Management," March 13, 1991, and DEPPM 91-2, "Implementing Defense Energy Management Goals" requested Component installations to actively participate in EC/DSM programs when and where such programs are offered by public utilities. The Memoranda further assigned the Department of the Army lead responsibility, in coordination with the Military Departments and Defense Agencies, to develop an integrated strategy for all DOD components, within the service territory of each utility, to coordinate activity and maximize benefits.

Executive Order 12759 of April 17, 1991, directed each agency to review procedures to participate in demand side management programs offered by public utilities and remove any impediments to receiving and utilizing services, incentives, and rebates offered by those programs. The Energy Policy Act of 1992, Public Law 102-486, further directed agencies to take maximum advantage of such services provided by public utilities to reduce energy use and cost to the Government.

This memorandum, developed by the Defense Components with Army leadership, establishes the guidelines for participation in EC/DSM programs offered by or to be negotiated with public utilities. Specifically, the attachment provides guidance on:

*Environmental Security*  *Defending Our Future*

- Entrance into agreements with utility companies for facility energy conservation audits, at no cost or obligation to the government, with such audits to be conducted either by the utility company or contractors selected and paid by them.
- Application for, and acceptance of, approved financial incentives, such as energy efficient equipment rebates or project feasibility study and implementation of cost sharing programs, offered by utility companies.
- Direct negotiation with utility companies or contractors approved and competitively selected by utilities for the installation of improved energy efficiency, demand or energy reduction equipment, where utility incentives cover a portion or the entire amount of implementation costs.
- Direct negotiation with utility companies for the development of EC/DSM programs not currently available.
- Development of an implementation plan to maximize the participation in such programs by all Component installations.

It remains Defense policy that all DoD installations actively investigate and participate in EC/DSM programs offered by their utility companies, when determined to be economically advantageous based on the life-cycle costs and benefits of the proposed measures.

Since many such mutually beneficial programs are time sensitive, actions should be taken immediately by installations to contact their appropriate utilities contracting authority to coordinate participation wherever advantageous to the Federal Government.

Addressees will establish schedules and procedures for their organizations to implement EC/DSM programs using the guidance attached. Please forward a copy of your implementing guidance to this office within 90 days.

Sherri Wasserman Goodman  
Deputy Under Secretary of Defense  
(Environmental Security)

**DoD  
INTEGRATED STRATEGY  
FOR PARTICIPATION IN  
PUBLIC UTILITY SPONSORED ENERGY CONSERVATION  
AND  
DEMAND SIDE MANAGEMENT (EC/DSM) PROGRAMS**

**1. Purpose:** To establish a coordinated and integrated strategy for Defense Component participation in commercial utility companies' Energy Conservation and Demand Side Management (EC/DSM) programs. The objective of EC/DSM participation is to maximize energy and dollar savings.

**2. Background:** Increasing environmental compliance and mitigation costs and the high cost of constructing utility generation and transmission facilities are causing many utility regulators to permit and/or require regulated utility companies to offer rebates and financial incentives to their customers to reduce electricity or gas demand on the utility systems. Many unregulated public utility companies are also finding it financially advantageous to initiate demand reduction programs. Incentives vary from no-cost energy studies to major financial contributions for project accomplishment. The cost of these programs has been incorporated into the utility rate structure.

Section 2851 of Public Law 101-510, codified as 10 U.S.C. 2865, states that the Secretary of Defense shall permit and encourage Military Departments, Defense Agencies, and other Components of the Department of Defense (herein referred to as Components) to participate in programs conducted by any gas or electric utility for the management of electrical demand or for energy conservation.

In addition, section 2801 of Public Law 102-484 amended 10 U.S.C. 2865 to allow military installations to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs in order to address the requirements and circumstances of the installation. If such an agreement between the utility and installation provides for the utility to advance financing costs for the design or implementation of a program to be repaid by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer. Subject to availability of funds, any repayment of the costs of such advance shall be made from funds available for the purchase of utility services.

The National Energy Conservation Policy Act, as amended by Section 546 of the Energy Conservation Policy Act of 1992, Public Law 102-486, authorizes and encourages agencies to participate in programs generally available to utility customers conducted by gas, water, or electric utilities to increase energy efficiency, improve electricity demand management or for water conservation.

**3. DEFENSE DEMAND SIDE MANAGEMENT SUBCOMMITTEE (DDSMS):** A Defense Demand Side Management Subcommittee of the Defense Utilities Energy Coordinating Council (DUECC), chaired by the Army, has been established. The initial



members of the committee are listed in enclosure 1. As large consumers of utility energy services, DoD installations can potentially achieve significant savings through a coordinated participation in EC/DSM programs. Ensuring this coordination is the primary function of the Subcommittee.

The functions of this Subcommittee are to:

- a. Coordinate and share pertinent information, and consolidate interests to maximize Defense installations' participation and benefits from EC/DSM.
- b. Support the Assistant Deputy Under Secretary of Defense (Conservation & Installations) and the Defense Energy Conservation Committee.
- c. Propose policy, including proposed changes in statutory guidelines and federal government procurement regulations, to remove barriers and increase benefits from participation in such programs.
- d. Recommend procedures and standard methodologies for dealing with the regulatory, technical and business aspects of the energy industry that impact DoD interests.
- e. Meet at the chair's call, but no less than once per year, and provide an annual report on the DoD wide participation in EC/DSM programs to ADUSD (CI).
- f. Develop and at least annually update an implementation plan which provides detailed guidance and milestones for an EC/DSM program for DoD installations.

#### **4. STRATEGY FOR PARTICIPATION IN EXISTING EC/DSM PROGRAMS:**

- a. Each Component will encourage its installations to take advantage of existing EC/DSM programs being offered, where these programs have been designed by the utility company, and made available to all customers in their specific rate classes. Examples of benefits offered through such programs include cash rebates for the installation of energy efficient light bulbs and controls to cycle air conditioners and water heaters, primarily to shift those loads towards periods of lesser utility demand.

Frequently, utilities provide free energy audits to identify actions that can be taken to reduce energy use and/or demand. Utility companies may also suggest the use of innovative technologies, such as thermal energy storage cooling systems, which may carry substantial rebates. Installations, through coordination with their utilities contracting authority, should take maximum advantage of such offerings, to the extent that the technology has been found to be technically sound and applicable to their specific requirements and conditions, and economically advantageous based on life-cycle analysis of costs and savings.

- b. Components will maximize the use of funds available for operations and maintenance for program participation. Other sources of funding, such as Military Construction (MilCon), Energy Conservation Investment Program (ECIP), Energy Savings Performance Contracting (ESPC) and Third Party Contracting (TPC) should be used when appropriate.
- c. When the utility company and the Government share the EC/DSM project cost, only the Government portion of the total cost will be budgeted for, as directed by higher authority. In order to reduce the budgeted cost, installations should work with utility companies to minimize the government's share.
- d. Rebates are considered as a project cost reduction, i.e., an incentive provided by the utility company to encourage customer funding of energy conservation projects. Such rebates may be cash contributions applied directly toward project construction costs, or discounts applied to utility service invoices. When provided by the utility, rebates should be retained at the installation in the account that funded the project or activity leading to the rebate.
- e. To accomplish work associated with EC/DSM projects when in conjunction with an energy savings performance contract management, Components will assist installations in negotiating directly with the utility company. If the utility employs a competitively selected service contractor, the utility should be requested to provide a statement to the installation contracting officer assuring a competitive selection process was used. This action will expedite the direct negotiation process for EC/DSM projects between the utility company, installation, and the competitively selected utility contractor.

**5. STRATEGY FOR CUSTOMIZED DSM INCENTIVE PROGRAMS:** Existing EC/DSM programs are generally developed by utility companies for relatively small residential and commercial customers. DoD installations provide the utility with an opportunity to contract for large amounts of energy and demand reduction with a minimum of contracting effort and administrative expense. Lead services have been designated to negotiate customized EC/DSM incentive programs on behalf of all the military installations within the utility's service territory.

Generally, the Military Department having the largest consumption or billing from a particular utility company will take the lead in investigating DSM savings, analyzing implementation opportunities and negotiating customized programs for all DoD installations in the utility's service territory. The lead service coordinates interests of the Defense customers in a particular utility service area, and includes them during their negotiations with that utility. A tri-service coordinated list identifying assigned lead service responsibility is contained in enclosure 2.

In the event that a particular Component has initiated DSM negotiations or contracts prior to the designated lead agency's involvement, that initiating agency may continue with its activities. However, a representative of the "designated" lead agency will be invited to

participate in all subsequent discussions and negotiations with the utility company and will become responsible for the coordination of additions EC/DSM activities in that territory.

Where regional Department of Energy (DOE) operations officers have taken the lead on rate case actions with utility companies, the Components will maintain close coordination with these DOE Offices on the EC/DSM programs and identify their point of contact to the DDSMS. By mutual agreement, DoD activities working with a lead DOE laboratory may select the laboratory as the coordinating agent for DoD installations as well.

Large reimbursable activities located on the installation, such as commissaries, interested in participating in EC/DSM programs must coordinate their participation with the host installation or lead service as appropriate, and benefit appropriately for their efforts.

Lead Service representatives for each utility service area will:

- a. Contact the local utility company to review existing and proposed EC/DSM programs for potential applications to military installations. This action will be pre-coordinated with other DoD installations in the area to assure that previous negotiations or acquisition related issues are considered. New programs should include no cost or low cost facility energy audits, assistance with analysis and design of energy and demand reduction opportunities, arrangements for the utility to provide up-front funding, arrangements for the utility to bill the government's share of EC/DSM program costs over time on the utility bill, arrangements for contractors, provisions for construction oversight, and assistance with verification of savings.
- b. Propose new consolidated EC/DSM programs to the utility companies which would be beneficial to the serviced installations.
- c. Encourage all military installations within the utility company's service territory to take prompt, aggressive action so that maximum program benefits can be achieved.
- d. Ensure that all military installations within the utility company's service territory are fully informed regarding options available, potential savings, contracting methods, etc.
- e. Encourage the utility company to provide maximum possible funding for EC/DSM projects by identifying advantages such as early reductions in utility demand and/or lower project administration costs.
- f. Encourage the utility company to obtain, through an open competitive process, contractors who could install EC/DSM equipment for the utility's customers and provide assurance that a competitive selection process was used.

- g. Assist utility companies in shaping their EC/DSM policies and programs during the formative process, including appropriate support and participation during EC/DSM hearings before state and/or public utility commissions.
- h. Inform the Army, as EC/DSM Lead Component, of the life-cycle cost analysis, negotiations, completed projects, business analysis, and utility rate increases or decreases.
- i. Invite other major Federal customers in the utility company's service territory to participate where appropriate.

## **6. OTHER ACTIONS:**

- a. The Army, as EC/DSM Lead Component, will maintain contact with various industry related agencies such as Edison Electric Institute (EEI), American Public Power Association (APPA), Electric Power Research Institute (EPRI), and National Association of Regulatory Utilities Commissioners (NARUC) as well as the Department of Energy's Federal Energy Management Program Office to stay abreast of the latest technologies and opportunities in the EC/DSM field.
- b. Each Component should develop and promulgate to their installations a detailed management plan for implementation of the EC/DSM program. A sample management plan is attached (Enclosure 3) for Components to use as a standard for content and detail.
- c. The Army will publish and distribute program lessons learned information annually and will provide recommended updates to this strategy, including lead service assignments for EC/DSM activities. All Components will provide input to the DDSMS to assist in this effort.
- d. The Components will present a semiannual EC/DSM program review to the chair of the DUECC to report progress, share implementation experience and to recommend program improvements.
- e. The Army will develop a training course with emphasis on the EC/DSM program and applicable to all Components. The course will be offered at various locations to minimize travel costs. Components will encourage their installation personnel to participate in this course. The Army will establish reimbursement procedures for this training in coordination with the other Components.
- f. To obtain the most benefits and reduce time it takes to process EC/DSM projects, components will encourage their installations to be pro-active and provide them authority to participate in EC/DSM programs without higher level approval, to the maximum extent possible. As this participation could result in potential impact on existing or developing utility service contracts, or other utility energy acquisition programs (i.e., Defense Fuel Supply Center direct supply natural gas program),

installations should be cautioned to be sensitive to such contract issues, particularly when entering into long term EC/DSM contracts, and to contact the appropriate utility procurement office within its Component for specific guidance in each instance and to ensure a coordinated Defense position within the utility's service territory.

- g. Each Component will develop and maintain the following lists and submit them to the Army, as EC/DSM Lead Component, for use in EC/DSM program coordination.
  - 1. List of all DoD installations within each utility company service area for which it has the lead responsibility.
  - 2. Installation Points of Contact.
  - 3. Installation energy usage, energy demands and associated costs.

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## Defense Utilities Energy Coordinating Council Rate Intervention and Demand Side Management Responsibility

The following lists public utilities with designation of the lead Armed Service for purpose of rate intervention and demand side management (DSM). Regulatory bodies will be making determinations regarding DSM programs and costs. While Executive Order 12759 applies to all, no civilian Executive Agency has to address the special statutory concerns of 10 U.S.C. 2865 (applying to both gas & electric utilities). Therefore a "lead Armed Service" has been designated below, though the rate intervention responsibility has been shared from time to time with General Services Administration (GSA) or Department of Energy (DOE). Where a different Armed Service is the "lead Service" in different regulatory jurisdictions is indicated below. Listing does not include water and sewer utilities to which DSM would not apply.

Where there has been some sharing of intervention interest among the Armed Services is indicated, also. The Army has handled all Federal Energy Regulatory Commission hearings for the Services.

<u>Utility</u>	<u>Lead Service</u>		
	<u>Rate Intervention</u> <u>Electric</u>	<u>Gas</u>	<u>DSM</u>
Alabama Electric Corp	Air Force		Air Force
Alabama Gas Co	Army		Army
Alabama Power Co (AL&FERC)	Army		Army
Arizona Public Service Co	Navy		Navy
Arkansas-Louisiana Gas Co (OK)	Army		Army
Arkansas-Louisiana Gas Co (ARK)	Air Force		Air Force
Arkansas Power & Light Co	Air Force		Air Force
Atlanta Gas Light Co (GA)	Army		Army
Atlantic City Electric Co	Army		Army
Baltimore Gas & Electric Co	Army		Army
Boston Gas Co	Navy		Navy
Boston Edison Co	Navy		Navy
Carolina Power & Light Co (NC)	Navy		Navy
Carolina Power & Light Co (SC)	Air Force		Air Force
Central Hudson Gas & Electric	Army		Army
Central Illinois Public Serv	Air Force		Air Force
Central Maine Power Co	Navy		Navy
Central Power & Light Co (TX)	Navy		Navy
Central Tele & Utilities (FERC)	Army		Army
City of Austin, TX	Air Force		Air Force

<u>Utility</u>	<u>Lead Service</u>		
	<u>Rate Intervention</u>	<u>Gas</u>	<u>DSM</u>
	<u>Electric</u>		
City of Colorado Springs, CO	Air Force		Air Force
City of Jacksonville (FL)	Navy		Navy
City of San Antonio, TX	Air Force		Air Force
City of Tacoma, WA	Air Force		Army
Colorado Interstate Gas Co	Army		Army
Columbia Gas Co		Army	Army
Commonwealth Edison Co (IL)	Army		Navy
Connecticut Light & Power	Navy		Navy
Conowingo Power Co	Army		Army
Consolidated Edison (NY)	Army		Army
Consumer Power Co	Air Force	Army	Air Force
CP National Corp (CA)	Army		Army
Dayton Power & Light Co	Air Force		Air Force
Delmarva Power & Light Co	Air Force		Air Force
Detroit Edison Co	Army		Army
Duquesne Light Co	Army		
El Paso Electric Co (TX & NM)	Army		Army
Enstar Gas Co (Alaska)		Army	Army
Florida Power Corporation	Navy		Navy
Florida Power & Light Co	Air Force		Air Force
Frederick Gas Co (MD)		Army	Army
Gas Co of New Mexico		Air Force	Air Force
Georgia Power Co	Army		Army
Great Falls Gas Co	Air Force		Air Force
Gulf Power Co	Air Force		Air Force
Hartford Elec Light Co (CT)	Navy		Navy
Hawaiian Electric Co	Navy		Navy
Idaho Power Co	Air Force		Air Force
Illinois Power Co	Air Force		Air Force
Indiana Gas Co		Army	Army
Indianapolis Power & Light Co	Army		Army
Iowa Southern Utilities (FERC)	Army		Army
Iowa Illinois G&E	Army	Army	Army
Jersey Central Power & Light Co	Army(1)		Army
Kansas Power & Light Co	Army	Army	Army



<u>Utility</u>	<u>Lead Service</u> <u>Rate Intervention</u>		
	<u>Electric</u>	<u>Gas</u>	<u>DSM</u>
Kansas Gas & Electric Co	Air Force(2)	Army	Air Force
Kauai Electric Co	Navy		Navy
Laciede Gas Co		Army	Army
Lone Star Gas Co		Air Force	Air Force
Louisiana Power & Light Co	Navy		Navy
Louisville Gas & Electric Co	Army	Army	Army
Maine Public Service Co	Air Force		Air Force
Maryland Natural Gas Co		Army	Army
Metropolitan Edison Co(PA)	Navy		Navy
Mississippi Power Co	Navy	Navy	Navy
Missouri Public Service Co	Air Force		Air Force
Montana Power Co	Air Force		Air Force
Montana Dakota Utilities, Inc	Air Force	Air Force	Air Force
Mountain Fuel Supply Co		Air Force	Air Force
Narragansett Electric Co	Navy		Navy
Nevada Power Co	Air Force		Air Force
New Orleans Public Service Co	Navy		Navy
New England Power Co	Army		Army
New York State Gas & Elec Co	Air Force	Air Force	Air Force
Newport Electric Co	Navy		Navy
Niagara Mohawk Power Co	Air Force		Air Force
North Carolina Natural Gas Co		Army	Army
Northern States Power Co (WI)		Army	Army
Northern States Power Co (ND)	Air Force	Air Force	Air Force
Oklahoma Gas & Electric	Air Force		Air Force
Oklahoma Natural Gas Co		Air Force	Air Force
Orange & Rockland Utilities, Co	Army		Army
Pacific Gas & Electric Co	Navy	Navy	Navy
Pennsylvania Electric Co	Army		Army
Pennsylvania Power & Light Co	Army		Army
Peoples Energy (IL)		Army	Army
Peoples Natural Gas Co (CO)		Air Force	Air Force
Philadelphia Electric Co	Navy		Navy
Piedmont Natural Gas Co (SC)		Air Force	Air Force
Potomac Edison Co	Army		Army

<u>Utility</u>	<u>Lead Service</u>		
	<u>Rate Intervention</u>	<u>Gas</u>	<u>DSM</u>
	<u>Electric</u>		
Potomac Elec Power Co (DC)	Army		Army
Potomac Elec Power Co (MD)	Army		Army
Provident Energy Inc (RI)		Navy	Navy
Public Service Co of Colorado	Air Force	Air Force	Air Force
Public Service Co of Indiana	Air Force		Air Force
Public Service Co of NH (NH)	Navy(3)		Navy
Public Service E & G Co (NJ)	Navy	Navy	Navy
Public Service Co of NM	Air Force		Air Force
Public Service Co of OK (FERC)	Army		Army
Puget Sound Power & Light Co	Navy		Navy
Sacramento Mun Utility Dist	Air Force		Air Force
San Diego Gas & Electric Co	Navy	Navy	Navy
Savannah Electric & Power Co	Army		Army
Sho-Me Power Corp	Army		Army
Sierra Pacific Power Co (NV)	Navy		Navy
Sierra Pacific Power Co (FERC)	Army		Army
South Carolina E&G (electric)	Navy		Navy
South Carolina E&G (gas)		Army	Army
South Jersey Industries		Army	Army
South Carolina Pub Svc Auth	Navy		Navy
Southern California Gas Co		Navy	Navy
Southern Cal Edison Co	Navy		Navy
Southern Union Gas Co (TX)		Army	Army
Southern Connecticut Gas Co		Navy	Navy
Southern Maryland Elec Co-op	Navy	Navy	
Southwest Gas Co (AZ)		Army	Army
Southwest Gas (Ca)		Navy	Navy
Southwest Gas (NV)		Air Force	Air Force
Southwestern Pub Svc Co	Air Force		Air Force
Southwestern Gas&Elec (LA)	Air Force	Air Force	Air Force
Tampa Electric Co	Air Force		Air Force
Texas Utilities Elec Co	Air Force		Air Force
Tucson Elec Power Co	Army		Army
UGI Inc		Army	Army
Union Electric Co (MO)	Army		Army

<u>Utility</u>	<u>Lead Service</u>		
	<u>Rate Intervention</u>	<u>Gas</u>	<u>DSM</u>
	<u>Electric</u>		
United Cities Gas Co (VA)		Army	Army
United Cities Gas Co (GA)		Army	Army
Upper Peninsula Power Co	Air Force		Air Force
Utah P&L Utah (PacifiCorp)	Air Force		Air Force
Utah P&L (FERC)	Army		Army
Valero Gas Co		Air Force	Air Force
Virginia Elec & Power Co	Navy		Navy
Virginia Natural Gas		Army	Army
Washington Gas Light Co		Army	Army
West Penn Power Co	Army		Army
West Texas Utilities Co	Air Force		Air Force
West Florida Natural Gas		Air Force	Air Force
Wisconsin Power & Light Co	Army		Army

1. When Fort Dix closes, JCP&L becomes Air Force responsibility
2. Army will handle successor, Kansas Power & Light Co. after the merger of KG&E and KP&L
3. Navy handles PSNH (or successor from bankruptcy)



## Sole Source Justification

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### Alternative Financing Guidance Memorandum (AFGM) #001

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#### *Alternative Financing Guidance Working Group*

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*Authority to Sole Source Utility Service Contracts as referenced in section 152 of the Energy Policy Act (EPAAct) of 1992.*

#### *Issue*

Clarification on whether section 152 of EPAAct provides the statutory exception from the Competition in Contracting Act's full and open competition requirement for demand-side-management utility contracts.

#### *Policy in Brief*

Section 152(f) of Public Law 102-468, the Energy Policy Act of 1992 (EPAAct), which amends section 546 of the National Energy Conservation Policy Act, states the following:

(c) Utility Incentive Programs

- (1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.
- (2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.
- (3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.

***Background***

***Need:*** As agencies strive to meet the energy reduction goals set forth in EPO Act and Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities, the ability to quickly develop projects and implement contracts is crucial. Agencies have been unclear concerning their authority to establish sole source contracts with their franchised and/or serving utility for demand-side management services, and this lack of clarity can result in significant delays. Field personnel have requested clarification from their agencies' headquarters several times on this issue and many memoranda have been issued in response to these requests over the past four years (see Related Documents below).

***Goal/Objective:*** A definitive statement on this issue contained in one memorandum provides clarification to agency field personnel so they can quickly take advantage of opportunities to implement energy-efficiency and water conservation utility contracts of this nature.

***Relevant Authorities:*** Section 152 of EPO Act is the language in question. Additional relevant authorities are listed under "Related Documents" at the end of this memorandum. As stated earlier, memoranda requesting clarification on this issue have been issued by several agencies including the Department of Energy, the General Services Administration, and the Department of Defense; these are also cited under "Related Documents."

***Findings***

The number of utilities offering incentive programs to the Federal Government has significantly increased over the past few years. Deregulatory changes occurring in the electric utility industry, the likelihood of competition among utilities in the near future, and the increase in customer service offered by all utilities make these programs more attractive than ever before. It is in the government's best interest to take advantage of these incentives while they are available.

These programs provide the government with a means to accomplish many significant goals: (1) to increase energy efficiency and to conserve water and manage electricity demand, (2) to reduce the utility funds needed to operate and maintain Federal facilities, and (3) to provide agencies with another avenue for achieving the 30% energy-reduction goal set for the in Executive Order 12902.

### *Guidance Statement*

This memorandum is being issued to clarify the existing language in Section 152 of EPO Act with regard to whether agencies have the legal authority to enter into sole-source contracts with their franchised and/or serving utility for utility incentive programs.

In the DOE memorandum dated July 7, 1994, from Anne Troy through Mary Ann Masterson to Mr. Philip Winter with the subject "Statutory Exception from the Competition in Contracting Act's Full and Open Competition Requirement in Demand Side Management Utility Contracts," DOE's General Counsel found that Section 152 of Public Law 102-468, Energy Policy Act of 1992, provides the authority to "sole-source" utility service contracts to obtain demand-side management services. It concluded that the language contained in Section 152 does meet the criteria of one exception to the Competition in Contracting Act of 1984 (CICA). That exception is contained in 41 USC (253(c)(5), which provides that a civilian agency may use other than competitive procedures when "a statute expressly authorizes or requires that the procurement be made . . . from a specified source."

As recently as December 13, 1996, a memorandum was issued by the Department of Energy from Lawrence Oliver to John Archibald reiterating the statement that the language in section 152 of EPO Act does provide sufficient legal authority for agencies to established sole-source contracts with their utility for utility incentive program service contracts. This DOE memorandum responded to a request for a legal opinion in order to gain approval for a specific utility project.

Since DOE is tasked with promulgating regulations under the Energy Policy Act, the memoranda referenced above clearly provide the guidance and legal interpretation needed to allow representatives in all civilian agencies to act in accordance with EPO Act.

Likewise, the language in 10 USC 2865 and in the DOD Defense Energy Program Policy Memorandum 94-1 of December 20, 1993, provides the military departments and defense agencies with clear authorization to "sole source" with their franchised and/or serving utilities for these types of services.

In summary, ample justification exists for Federal agencies, both civilian and military to enter into sole-source agreements with their franchised and/or serving utilities for any financial incentives, goods, and services provided under their incentive programs.

## *Likely Uses of This Guidance*

This guidance allows Federal agencies to use existing or new utility contract authority for energy services where competition is not required but may be used when desired. This allows agencies to participate in energy efficiency and water conservation programs conducted by gas, water, or electric utilities that are generally available to customers of such utilities.

## *Related Documents*

1. Executive Order 12902, L&AP Book, p. 45–56
2. 42 USC 8256 (also NECPA, Title VIII, Section 546), L&AP Book p. 73–74
3. 10 USC 2865, L&AP Book p. 81-83
4. DOD memo for 021A from 09CB1, dated 29 Jan 93, L&AP Book p. 13-14
5. GSA memo for Ida Ustad from Edward Broyles, dated 29 Apr 93, L&AP Book p. 5-7
6. DOD – DEPPM 94-1, 20 Dec 93, L&AP Book p. 85-92
7. DOE memo for Philip Winter, GSA, from Anne Troy through Mary Anne Masterson, dated 7 July 94, L&AP Book, p. 10-12
8. GSA memo for Ida Ustad from Edward Broyles, dated 7 Nov 94, L&AP Book p. 9
9. GSA memo for Eric Dunham from Amy Brow, dated 11 Apr 95, L&AP Book p. 15-17
10. DOE memo for Larry Oliver from Ralph Oser, date 12 Dec 96
11. DOE memo for John Archibald from Lawrence Oliver, dated 13 Dec 96

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## **Congressional Notification for Utility Projects**

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### **Alternative Financing Guidance Memorandum (AFGM) #002**

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*Congressional Notification for Utility Projects Under the Authority of Section 152 of the Energy Policy Act (EPAct) of 1992.*

#### *Issue*

Clarification on whether utility projects entered into under the authority of section 152 of EPAct require notification to Congress prior to contract award.

#### *Policy in Brief*

Section 152 of the Energy Policy Act, Public Law 102-468, provides the authorization for Federal agencies to enter into contracts with their franchised and/or serving utility for utility incentive programs. It does not specify whether Congressional notification is required before the contract can be awarded.



These utility contracts are similar in nature to ESPCs (energy savings performance contracts), which are also allowed through EPCa and, consequently, are commonly mistaken as one and the same. The ESPC Procedures and Methods (10 CFR 436) do require Congressional notification as follows:

10 CFR 436.34 (a)(3) states:

Thirty days before the award of any multiyear energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of \$750,000, the head of the awarding Federal agency gives written notification of the proposed contract and the proposed cancellation ceiling for the contract to the appropriate Congressional authorizing and appropriating committees.

### ***Background***

***Need:*** Often the regulations that apply to Energy Savings Performance Contracts are confused with the regulations applied to utility contracts. In title 10 of the Code of Federal Regulations, part 436, the rules for ESPCs clearly indicate a need for Congressional notification prior to contract award for projects totaling \$750,000 or greater. Congress must receive notification of the project and be given a minimum of 30 days to respond. If Congress does not respond within the 30-day period, the agency may proceed with awarding the contract.

The utility contracting guidelines do not address the need for Congressional notification. Because the authorities for utility contracting of this nature are silent on this issue, many agencies feel the need to notify Congress as a "just in case" measure.

***Goal/Objective:*** Clarifying this issue once and for all in one memorandum that applies to all Federal agencies will eliminate the need for continuous clarification on this issue. Eliminating this issue could reduce by several months the time it takes to receive approval to implement utility contracts of this nature.

***Relevant Authorities:*** Section 152 of EPCa is the utility contracting language that does not address Congressional notification while 10 CFR 436 is the ESPC rule that does require notification to Congress.

### ***Findings***

Preparing a Congressional notification can take many months. Receiving upper management approval on the notification can be a time-consuming process of explaining the project, reiterating the authorities behind the ability to do the project, and explaining the Congressional notification process. After approval has been received and the notification has been sent, the 30-day waiting period begins. All in all, this entire process could take more than six months to complete.

It is in the best interest of the government to reduce the time and resources required to enter into these contracts. Stipulating that notifying Congress is not a requirement of utility contracts can make the contracting process faster and more efficient.

Utility contracting provides the government with a means to accomplish many significant goals to: (1) increase energy efficiency and to conserve water and manage electricity demand, (2) reduce the utility funds needed to operate and maintain Federal facilities, and (3) provide agencies with another avenue to obtain the 30 percent energy reduction goal set forth in Executive Order 12902.

### ***Guidance Statement***

This memorandum is to clarify the issue of whether or not Congressional notification is necessary for utility contracts as allowed under Section 152 of EAct.

There is no indication in any of the laws, regulations, or policies that Congressional notification is required in utility contracting (as discussed in this statement). Therefore, this statement clarifies that any Federal agency may enter into a utility contract as allowed under section 152 of EAct without congressional notification.

### ***Likely Uses of this Guidance***

This guidance simply clarifies a procedural issue in the process of contracting with a utility to participate in utility incentive programs as allowed through EAct.

### ***Related Documents***

1. Energy Policy Act of 1992 (P.L. 102-486), L&AP Book p. 19-44
2. Executive Order 12902, L&AP Book p. 45-56
3. ESPC Rule (10 CFR 436), L&AP Book p.57-72
4. 42 USC 8256 (also NECPA Title VIII, Section 546), L&AP Book p. 73-74
5. 42 USC 8287 (also NECPA Title VIII, Sections 801-804), L&AP Book p.75-80
6. 10 USC 2865, L&AP Book p. 81-83
7. DOD - DEPPM 94-1, 20 Dec 93, L&AP Book p. 85-92

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## Relationship of Anti-Deficiency Act to Multi-Year Contracts

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### Alternative Financing Guidance Memorandum (AFGM) #003

#### *Relationship of Anti-Deficiency Act to Multi-Year Contracts Under the Utility Incentive Program*

##### *Policy in Brief*

Section 152(f) of the Energy Policy Act of 1992 (EPAct) authorized and encouraged Federal agencies to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water or electric utilities.

Since these contracts are for utility services under section 201 of the Federal Property Act, the only requirement on Federal agencies is the obligation of the annual costs for such contracts during each year that the contract is in effect. Therefore there is no conflict with the Anti-Deficiency Act for these multi-year contracts.

The following requirements must be met by such contracts in order that the services provided be considered “qualified” contracts for public utility services:

- (1) The primary purpose of the contract must be for the reduction of cost or use of energy and water and achieving greater efficiency;
- (2) The provision of general construction, training courses, and the purchase of supplies or equipment not directly related to an energy conservation measure or demand side management action is not permissible;

- (3) Energy or water savings must be sufficient to pay all costs under the contract; and
- (4) These contracts will not normally be used unless the net overall energy or water cost reduction can be demonstrated and verified.

### ***Background***

***Need:*** As agencies strive to meet the energy reduction goals set forth in the Energy Policy Act and *Executive Order 13123, Greening the Government Through Efficient Energy Management*, the ability to quickly develop projects and implement contracts is crucial. The Anti-Deficiency Act generally restricts agencies from entering into contracts without having the entire cost of the contract obligated. Agencies have been unclear concerning the ability to utilize long term, alternatively financed energy and water efficiency contracts offered by their franchised and/or serving utility companies and the possible conflict with the constraint of the Anti-Deficiency Act.

***Goal/Objective:*** A definitive statement on this issue contained in one memorandum to provide clarification to agency field personnel so they can quickly take advantage of the opportunities to implement energy efficiency and water conservation utility contracts.

***Relevant Authorities:*** Section 152 of EPAct, the Anti-Deficiency Act, *31 USC Section 1341*, and Section 201 of the Federal Property and Administrative Services Act of 1949, 40 USC Section 481 (a)(3), is the language in question. Additional relevant authorities are listed under “Related Documents” at the end of this memorandum.

### ***Findings***

The Anti-Deficiency Act provides, in part, that “an officer or employee or the United States Government or of the District of Columbia may not ... involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law ...” (emphasis added.) As a general rule, the cost of a contract must be fully funded at the time the Government enters into the contract. The Anti-Deficiency Act does, however, provide that Congress can specifically provide Federal agencies with contract authority to enter into a contract in excess of, or prior to, enactment of the applicable appropriations.

Section 203(a)(3) of the Federal Property Act is such a specific statute. Through it, Congress provided contract authority to the General Services Administration (GSA) (and those agencies to which the GSA has re-delegated that authority) to enter into contracts for utility services, for a term of ten-years, without obligating funds for the total cost of the contract. The intent of the statute is to allow agencies to enter into a cost-effective long-term contract for public utility services while only having sufficient budget authority to obligate its first year’s annual cost under the

agreement. Since the authority of Section 203(a)(3) pertains specifically to public utility services, care must be taken to assure that the energy and water conservation projects entered into under these contracts be limited to actions that fall under the intent of the term “public utility services.” Research into relevant findings of the Comptroller General and the General Accounting Office indicate that the definition of “public utility services” is flexible and adaptive, and should be broadly interpreted. The Department of Energy Office of General Counsel has determined that the provision of multi-year energy and water conservation management, and demand side management projects, including project financing and transferring title of equipment, falls under the definition of public utility services. In order to assure that the primary purpose of the contract is to reduce energy and water cost and use, the Counsel has provided requirements that such contracts must fulfill in order to be considered as “qualified” utility energy service contracts.

### *Guidance Statement*

This memorandum is being issued to clarify the question of if there is any constraint of utility energy service contracts imposed by the Anti-Deficiency Act.

In the DOE memorandum dated June 22, 1999, from Mark Schwartz to Shelly Fidler with the subject, “Relationship of the Anti-Deficiency Act to Multi-Year Contracts Under the Utility Incentive Program Authorized Under Section 152(f) of EPAct,” DOE’s Deputy General Counsel stated the results of deliberate and extensive review of the issue. He found that “the DSM and energy and water conservation and efficiency contracts authorized by section 152(f) of EPAct can qualify as “contracts for public utility services” under section 201 of the Federal Property Act. As such they are not subject to the requirement that funds must be obligated for expenses (including potential termination costs) beyond the first year, and that the contracts can have up to a ten year term.”

Since DOE is tasked with promulgating regulations under EPAct, the memoranda referenced above clearly provides the guidance and legal interpretation needed to allow representatives of all Federal agencies to act in accordance with EPAct.

In summary, ample justification exists for Federal agencies to enter into contracts for energy and water conservation with utility companies without having to obligate any costs for such a contract beyond that necessary to cover the costs of the first year of the contract. The only obligation that agencies have prior to entering into such contracts is to assure that they meet the qualifying requirements specified by the DOE Counsel.

### *Likely Uses of this Guidance*

This guidance allows Federal agencies to use existing or new utility contract authority for energy and water services without concern that the Anti-Deficiency Act requires total contract cost appropriation.

### *Related Documents*

1. Executive Order 13123
2. DOE memo for Shelly Fidler from Mark Schwartz, dated June 22, 1999
3. GSA memo for Sharon Roach from Harmon Eggers, dated July 29, 1994

### *Points of Contact*

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## Source of Funds

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### **Alternative Financing Guidance Memorandum (AFGM) #004**

*Federal Fund Sources to be Used to Pay for Multi-Year Contracts Under the Utility Incentive Program*

#### *Policy in Brief*

Section 152(f) of the Energy Policy Act of 1992 (EPAct) authorized and encouraged Federal agencies to participate in Utility Incentive Programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water or electric utilities.

Since these contracts are for utility services under Section 201 of the Federal Property Act, the only requirement on Federal agencies is the obligation of the annual costs for such contracts during each year that the contract is in effect. The payment of the costs associated with those contracts can come from whatever fund sources the agency determines it can use for utility services under their utility contract authority.

#### *Background*

**Need:** As agencies strive to meet the energy reduction goals set forth in Public Law 102-486, the Energy Policy Act of 1992, and *Executive Order 13123, Greening the Government Through Efficient Energy Management*, the ability to quickly develop projects and implement contracts is crucial. Agencies have been unclear concerning the fund sources that can be used to pay for long term, alternatively financed energy and water efficiency contracts offered by their franchised and/or serving utility companies.

***Goal/Objective:*** A definitive statement on this issue contained in one memorandum to provide clarification to agency field personnel so they can more quickly take advantage of the opportunities to implement energy-efficiency and water conservation utility contracts.

***Relevant Authorities:*** Section 152f of EPCA is the statute that authorizes and encourages Federal agencies to use Utility Incentive Programs; Section 201 of the Federal Property Act is the statutory authority for the purchase of utility services; and Title 10 Section 2865 provides additional guidance to the Department of Defense for entering into agreements with utility companies for cost effective demand and conservation incentive programs.

Section 155 of EPCA as implemented by regulation provides strict guidance on the payment of costs incurred in the implementation of Energy Savings Performance Contracts (ESPC). Specifically the annual payment for such a contract may not exceed the cost savings for that year, and payment must be made from energy or energy related cost savings.

While there is no similar restriction in statute concerning the payment of costs under utility incentive programs, many agencies have followed the guidance for ESPC payment for utility contracts. In some cases use of the flexibility of utility services contract payment from funds not directly associated with energy or energy related cost savings and/or in excess of annual savings could reduce the contract term and financing costs, and be in the best financial interest of the Federal government.

### ***Findings***

Section 203(a)(3) of the Federal Property Act is such a specific statute. Through it, Congress provided contract authority to the General Services Administration (GSA) (and those agencies to which the GSA has re-delegated that authority) to enter into contracts for utility services, for a term of ten-years, without obligating funds for the total cost of the contract. The intent of the statute is to allow agencies to enter into a cost-effective long-term contract for public utility services while only having sufficient budget authority to obligate its first year's annual cost under the agreement.

Section 2865 (d)(4)(B) of Title 10 of the United States Code states that "subject to the availability of funds, repayment of costs advanced under subparagraph (A) {financing costs} shall be made from funds available to a military department for the purchase of utility services."

### ***Guidance Statement***

This memorandum is being issued to clarify the question of which fund sources can be used by an agency to pay for utility incentive programs.

In summary, there is no statutory restriction on the type of funds to be used to pay for utility incentive programs or that the amount be equal to or less than the annual savings. Agencies



can use any fund sources that the agency determines it can use to pay for utility services. These funds can include those that are used to pay for the elements of associated cost savings generated from the contract, such as personnel and capital cost savings

### *Likely Uses of this Guidance*

This guidance clarifies the fact that the choice of fund sources is not constrained by statute. The contracting officers of each agency have the discretion to use any funds, deemed appropriate for use by that agency to pay for utility services, to pay for Multi-Year Contracts under the Utility Incentive Program.

### *Related Documents*

- 1) Public Law 102-486,
- 2) Executive Order 13123

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# Lessons Learned



## Utility Energy Services Contracts: Lessons Learned

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### Introduction

The use of Utility Energy Services Contracts (UESCs) has evolved over the past 10 years. The following recommended best practices have been generated by a growing group of innovative energy managers in many successful projects. While each specific Federal facility and its relationship with its utility company is unique, considering the experience of these pioneers can make future UESCs easier to implement and even more successful. Six sections of this document relate to project finance issues. The last two sections concern competition between franchised utility companies and best practices for water conservation.

### Financing UESCs

#### Understanding Financing Factors

Financing is a significant part of the cost of doing a UESC project, and experience shows that there are several things the Federal government can do to reduce the financial transaction costs and interest. This section describes practices that some agencies have used to keep costs as low as possible.

Interest rates are based on the sum of an index rate on the date the transaction is signed and a “premium” or “adders,” usually measured in basis points, where 100 basis points is equal to 1%. The premium reflects the costs of obtaining the financing under prevailing market conditions, financial risk, transaction costs, and profit for the finance company. The utility company needs to recover transaction costs as well (this may be included in overhead, as a separate finance charge, or more rarely in the premium). The final result is a premium that in the past has typically added 100 to 250 basis points (1.0% to 2.5%) to the base index rate. Financial market fluctuations affect premiums as well as index rates. For example, the current trend includes falling index rates offset by higher premiums due to a more conservative and restricted corporate credit market. This may continue as long as current concerns about the economy persist.

Financial transaction costs (and the margin to cover them) have been decreasing as an increasing number of Federal agencies use the same basic contractual forms and clauses and as finance companies become more familiar with the constraints and uniqueness of financing Federal energy projects. All other things being equal, using standard, acceptable contract terms and conditions reduces the perception of risk, shortens approval time, and reduces transaction costs.

#### **Factors that affect risk and finance rate**

- Term of financing
- Amount of financing
- Utility bond rating/financial status of contractors
- Perceived performance risk
- Contractual provisions
- Pertinence to agency mission
- Type/complexity of project
- Lower perceived risk to the finance company

#### **Financial Market Fluctuations**

Until recently, the base index for UESC finance rates was the U.S. Treasury bill (T-bill) rate for a time period approximating that of the loan. In 2001, the finance community indicated that the international “swap rate” was preferred because it best reflected the cost of money on the markets where these projects must compete for financing. The financial market for UESC projects is very different from consumer loan markets (home mortgages, for example). This is a very limited, structured market. If the finance company is required to use a T-bill rate and it is lower than the prevailing swap rate (which better reflects the market where the project will get financed), the difference will probably be erased by a larger spread. To track T-bill and swap rates (listed under “interest rate swaps”) for different maturity periods, see the Federal Reserve Web site at [www.federalreserve.gov/releases/h15/data.htm](http://www.federalreserve.gov/releases/h15/data.htm). You cannot influence the value of an index rate. But whatever the agreed-upon index rate, the best business practices discussed in this document could help you to reduce the premium or adders that go on top of it, as well as other financial transaction costs.

#### **Ten Ways to Lower Perceived Risk and Finance Rates**

Federal agencies have used various methods to lower perceived project risk and finance rates. In some cases, and increasingly as credit tightens, several of these guidelines are prerequisites to obtain private financing. Individual finance companies have their own experience and perception of the importance of specific contract clauses. The following generalizations should be discussed during the negotiation of each project.

##### **1. Time is money**

Anywhere you can reduce processing time and facilitate quick closure of your deal, you will save money. First, a short turn-around reduces the administrative cost for your utility and the subcontractors’ project development teams. Delays also affect the interest rate. In the past, a finance company could usually hold a rate for a week or two without charge, but given

current market volatility, you will need to consult with your finance company. Finally, and most importantly, the sooner the project is implemented, the sooner it begins saving energy and money for your facility, so every day of delay is an opportunity lost for cost savings. Chronic late payments can also result in compensating increased interest rates, so it is important to the entire program to make sure that payments are made on time.

### **Shopping for the best rates**

At least one utility active in this market has conducted its own competitive process to establish a list of pre-qualified finance firms for Federal energy projects. Each time a new project is designed and ready to finance, a standard form is used to share project data with the pre-qualified firms, who can give a quick response to the utility looking for the best value for construction and term financing. A recent \$3 million project elicited quotes that varied by about 100 basis points, with final term financing at 7%. Savings compared to the highest interest rate quoted were approximately \$580,000 over a 10-year term.

## **2. Communicate with finance companies**

While it may be inappropriate to discuss the financing of a specific project with anyone other than the utility company as the contractor, most finance companies are happy to discuss the rates, adders, and costs associated with financing projects. This provides an opportunity to explore ways to reduce risk and obtain the lowest possible rate for a specific project. Many agencies leave all communication up to the utility or contractor, but there is no prohibition against asking the utility to have its selected finance company attend project negotiation meetings to answer questions and provide financing clarity. Most UESC payments flow directly to the finance company, and those finance costs often represent more than half the total project costs for the government. Consequently, it makes good business sense to get acquainted with the details of financing and ensure that you've done all you can to get the best possible rate for your project. Ask your finance company to identify financial costs separately and to clarify the specific rate impact of individual contract terms and conditions that are significant. You can then evaluate the importance of those clauses individually. Similarly, ask for a breakout of the net present value of the finance company's fee, both at closing and during the payment period, to enable you to compare it with similar projects.

### **Why Bother?**

What are a few basis points worth over the term of your loan? The amount depends on the capital investment financed and the length of the term, but it can be significant. For example, with a 10-year term, an increase of just 30 basis points from 7.0% to 7.3% has the following impacts:

Investment Value Increased Cost\* over the term for 30 basis points

\$1.5 million project    \$ 83,780

\$4.5 million project    \$251,340

\$6.0 million project    \$363,100

\*These dollars could be better spent on facilities improvements.

### **3. Compare rates**

Once the basic parameters of your project (size, type of equipment, expected annual savings) are known, it is possible to get rate comparisons by calling the firms active in this market. A relatively small number of reputable finance organizations specialize in energy projects at Federal facilities. Formal competition for financing (particularly for smaller projects) may result in administrative costs that exceed the value of the competition. Consider a comparison of rates rather than formal competition. Ask your utility for a comparison of rates for recent project financing of similar dollar amounts. The Federal Energy Management Program (FEMP) can provide guidance based on other projects and can help you to identify sources for comparison.

### **4. Use standard terms and conditions**

Contract clauses and formats that are unfamiliar to the finance company can increase risk because they are different from what has been tried and proven. They may also lead to significant increases in transaction costs and longer timetables for execution. To keep costs low, try to use the standard terms and conditions and contractual forms already established for UESCs in the area-wide energy services annex and model agreements with your utility and finance company.

### **5. Negotiate buy-down and prepayment formulas in advance**

Standard language for buy-down, prepayment, and termination (for convenience or otherwise) with pre-negotiated terms and conditions can, in some cases, hold finance costs down. If these terms are not clearly set forth in the contract, it will significantly increase risk and could cause the government serious problems with future contract administration. (See page 97.)

### **6. Structure appropriate measurement and verification**

Cost-effective measurement and verification of energy efficiency improvement and savings, coupled with a performance guarantee, is strongly recommended and can be achieved through alternatives to a contractual cost-savings guarantee. Finance companies reportedly establish the interest rate primarily on the basis of the experience and expertise of the utility and its subcontractors, relying on their credibility to evaluate the risk of specific technologies. While the margin for specific technologies set by the utility can be reduced by negotiating reasonable measurement and verification criteria, interest rates should not be affected by the complexity of the energy conservation measures.

### **7. Include explicit language minimizing risk to the finance company**

A payment structure that minimizes risk to the finance company is the central element of reducing perceived risk and obtaining a lower interest rate. To keep rates low, include clear terms for how and when payments will be made, demonstrated ability to comply with those terms, and standard clauses to protect the finance company from offsets and future claims related to performance (assignment of claims).

### **8. Avoid unnecessary hedge costs: do not buy an interest rate “lock”**

To keep government costs (and the long-term interest rate) low, it is not necessary to require a guaranteed or fixed interest rate long before the date of award. Instead, a formula based on an index rate (e.g., T-bill or swap rate) and adders should be negotiated and set forth in the contract, stating how the final rate will be established on or near the day the delivery order contract is signed. Letting the finance company set the interest rate as close to the actual contract date as possible reduces the risk of rising rates and eliminates the hedge cost.

### **9. Bundle energy conservation measures**

Bundling many energy conservation measures (ECMs) together can result in lower rates and more conservation for each dollar invested. Bundling also offers the facility other benefits by reducing contract and administrative burdens and optimizing energy savings. More ECMs and greater facility improvement can be included when those with longer-term payback periods are bundled with and offset by those with quick payoff terms. Just as some finance companies are bundling projects to attract lower interest rates from a portfolio risk management perspective, facility managers can also spread out the perceived performance risk by combining many ECMs.

### **10. Show that the project is important for the facility and that the facility is expected to have a strong mission during the contract period**

Most finance companies look on a Federal government contract as a secure investment. But if there is any uncertainty about the future operation of the facility where the project is implemented, this can increase the perceived risk of premature contract termination and finance costs, or put the deal in jeopardy during negotiations. Ensure that the finance company understands that this project is an important asset for the facility and that the facility is expected to have an ongoing mission that will outlive the project's contract period. Provide documentation, if necessary.

#### **Additional Savings**

Savings may be possible by ensuring that the payment stream to the finance company will not be affected by performance guarantees.

#### ***Example***

In a Department of Defense project, contract language helped ensure that the payment stream to the finance company would not be interrupted though the utility included an energy savings performance guarantee in the contract. This reportedly helped obtain a discount of nearly 100 basis points (1%) in financing. The project was signed in 1999 for \$15 million at 7.0% interest. The estimated benefit to the government of a 100 basis point reduction in interest, given the 10-year term and total investment, was near \$2 million.

### **Using Annual Payments to Decrease the Total Interest Paid**

The annual payment option allows the government to pay for an entire fiscal year (12 months) of payments in advance. This method is attractive to finance companies and may also fit Federal budget and finance constraints, saving the government a substantial amount

of interest expense. Savings are generated because the financing is amortized quicker, and less interest accrues over the term of the project financing. But note one important feature: the interest rate used for a monthly amortization is lower than that used for an annual amortization (mathematically known as the bond equivalent yield). However, even with the slightly increased interest rate, interest payments over the payment period are less than monthly payments. The net effect is that total interest payments decrease, depending on the term, by 8% to 14%. In some cases, finance companies prefer that the annual payment be made on December 1 so they are assured that the agency will have received its annual appropriation. The two examples show approximate savings for different amounts and contract periods.

#### **Example 1**

Finance term: 120 months (10 years)  
Project amount: \$10 million  
Monthly interest rate: 8%  
Monthly payment: \$121,327/month  
Annual interest rate: 8.3%  
Annual payment: \$1,394,758/year  
Total monthly payments: \$14,559,310  
Total annual payments: \$13,947,580  
Savings from annual payment: \$611,730  
Interest savings: 13.5%

#### **Example 2**

Finance term: 240 months (20 years)  
Project amount: \$20 million  
Monthly interest rate: 8%  
Monthly payment: \$167,288/month  
Annual interest rate: 8.3%  
Annual payment: \$1,923,112/year  
Total monthly payments: \$40,149,122  
Total annual payments: \$38,462,252  
Savings from annual payment: \$1,686,870  
Interest savings: 8.3%

### **Recommended Buy-Down/Buy-Out Prepayment Approaches**

Most project contracts for energy services allow the government to prepay the financing obligation at any time during the term of the contract in accordance with a pre-established termination schedule. When underwriting a long-term debt obligation, an investor or lender is committing its assets to an investment that is expected to provide a fixed rate of return over the term of the contract. If the investment is prepaid, the investor or lender must take the



prepayment proceeds and reinvest them in another financial instrument that will, hopefully, ensure the same rate of return, regardless of current market conditions.

Historically, the Federal finance marketplace has experienced few terminations for convenience or prepayments. Because of this, there should be little, if any, premium paid by the government for its right to prepay. However, to the extent that the government begins to consistently and systematically prepay, and particularly should prepayments be based on lower market interest rates, then it is likely that a premium of between 25 and 50 basis points would be charged for the prepayment right. The government can obviously reduce its costs associated with prepayments (such as the termination liability premium, interest rate premium, or make-whole penalties) by limiting prepayments to actual terminations for convenience.

### **Minimizing Prepayment Costs**

An alternative to paying a premium rate (thus having increased monthly payments over the entire term of the financing) provides a means of protecting against a possible prepayment shortfall. Customers and borrowers typically choose to use a formula that reflects the current interest rate at the time a prepayment is made. This ensures that prepayment is not paid for as an additional assessment to the monthly payment, but rather in the form of the actual cost at the time of the event. Thus, the government does not pay an increased interest rate for an option that may never be exercised.

The Federal finance marketplace has several other ways to minimize the cost to the government from prepayments. Some finance companies have substantially reduced the effective risk of prepayment, without charging the government an interest rate premium or the use of a make-whole formula, by aggregating Federal transactions into portfolios. In this case, the number of projects financed spreads the potential of prepayment and the perceived financial risk over all projects. Another way that prepayments can be accepted without adding a premium or penalty is by allowing the finance company to reinvest the money for the benefit of the government and use the accrued interest and principal to shorten the term of the transaction.

Projects for single transactions that aren't financed as part of a larger portfolio may indeed receive a lower interest rate if a make-whole formula is inserted into the contract. Some finance companies offer a lower financing rate if a make-whole clause is used, others do not. The make-whole premium will not compensate the government for the benefit enjoyed by the finance company should the prepaid funds be reinvested at a higher rate, but will cost the government money if rates have fallen. The make-whole clause may limit future flexibility because it does not allow refinancing if rates go down during the contract term. The formula, in contrast with a fixed amortization schedule, is designed to protect an investor should the government elect to prepay a finance obligation at a time when interest rates (treasuries or swap rates) are lower than when the financing was originally initiated. The formula offers investors or lenders protection for yield maintenance. At the same time, it allows the government to take advantage of a substantially lower interest rate. The impact of the make-whole provision should be evaluated in detail in order to decide on which prepayment strategy is the best.

### **Recommended Prepayment Formula Clause**

The following is a draft clause that could be considered a way to establish a mutually agreeable prepayment formula (if swap rate is used, the reference should replace that of Treasury bill), if that course of action is believed to be the best for the specific situation.

*This task order provides that if the government prepays the task order at any time during the term, the government agrees to give the contractor thirty (30) days prior written notice and to pay a yield maintenance amount plus the un-amortized principal balance of the total funding amount plus accrued interest. The yield maintenance amount shall be equal to the difference, if positive, between (1) the net present value of the payments remaining to be paid through the term of the payment period, and (2) the un-amortized principal balance of the total funding amount. The calculation of the net present value shall assume that each remaining payment is made on the relevant payment due date and shall be discounted to the effective date of the prepayment at an interest rate equal to the sum of (i) the yield-to-maturity of a United States Treasury obligation having a term most closely approximating the average life of the un-amortized principal balance of the total funding amount, and (ii) one-half of one percent (1/2%). Such implied yield shall be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between yields reported for various maturities. In the event the government terminates or cancels the task order for any reason whatsoever after acceptance (including, without limitation, termination pursuant to the clause entitled "Termination for Convenience of the Government"), the Government agrees to pay the sum of (x) the yield maintenance amount calculated as described above and (y) the unamortized principal balance of the total funding amount plus accrued interest. The government acknowledges and agrees that the payment of such amounts are reasonable and allowable costs with respect to the task order."*

### **Competition Between Franchised Utility Companies**

There is no legal requirement to compete for utility incentive services provided by the "established source" utility company to a Federal facility in the utility's franchised service territory. If such services are available to customers of the utility company, the Energy Policy Act of 1992 states that there should be no restriction on the Federal facilities directly availing themselves of the same service as any other customer. However, if there is more than one serving utility company offering utility energy services (for example, a gas company and an electric company), the Federal Acquisition Regulations and good fiscal management would require the government to evaluate each utility and select the one that provides the best value. This evaluation can be as simple as a discussion of the experience, expertise, and specific offer of each, to limit the administrative costs on both public and private sectors, or as rigorous as a formal competitive procurement process. The decision to compete and the level of competition are completely at the discretion of the Federal facility, based on the specific situation and unique constraints and opportunities. It is also strongly recommended that the utility company be required to competitively select the technical subcontractors to do the actual work and that the subcontracting plan comply with the Federal utility contract requirements (either General Services Administration [GSA] area-wide or other delegated authority contract).

## **Water Conservation Best Practices**

Federal sites across the country are incorporating water-efficiency measures as part of their overall comprehensive UESC projects. As it becomes more difficult to secure internal funding for efficiency projects, working with your local utility can be a very effective way to implement a comprehensive program that incorporates water-efficiency measures.

### **Why Water Conservation?**

The rising cost of water and sewer services is one reason why sites should include water-efficiency measures as part of their overall efficiency program. The GSA water and sewer rates have increased, on average, by 23% between 1993 and 1999. In the GSA Rocky Mountain region, these rates increased by more than 180%, reflecting an increasingly scarce water supply in many regions of the country. Another incentive for water conservation in your energy program comes from Executive Order 13123. It mandates water-use reductions at Federal sites, stating, “Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities.”

Water-efficiency technologies often have short paybacks of six years or less. Many water-conservation measures not only save water but save energy as well, used in both heating and pumping. Utilities and sites are discovering that incorporating water conservation as part of an energy program helps to buy down the overall cost of the project. In one case, a utility was able to include an additional 15% of mechanical work by implementing water-efficiency measures in comprehensive energy projects at Federal sites.

### **Water-Efficiency Improvement Best Management Practices**

FEMP has developed “Water-Efficiency Improvement Best Management Practices” (BMP) as part of the program to accomplish the Executive Order 13123 goal to reduce Federal water consumption. Use these highly recommended BMPs as a guideline for incorporating water conservation in your comprehensive UESC projects:

- BMP # 1 - Public Information and Education Programs
- BMP # 2 - Distribution System Audits, Leak Detection, and Repair
- BMP # 3 - Water-Efficient Landscape
- BMP # 4 - Toilets and Urinals
- BMP # 5 - Faucets and Showerheads
- BMP # 6 - Boiler/Steam Systems
- BMP # 7 - Single-Pass Cooling Systems
- BMP # 8 - Cooling Tower Systems
- BMP # 9 - Miscellaneous High Water-Using Processes
- BMP #10 - Water Reuse and Recycling

These BMPs can be found on the FEMP Web site at [www.eren.doe.gov/femp/resources/waterguide.html](http://www.eren.doe.gov/femp/resources/waterguide.html).

**For More Information**

FEMP Help Desk: 800-DOE-EREC (363-3732)

Web site: [www.eren.doe.gov/femp](http://www.eren.doe.gov/femp)

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# Next Steps



## Reference Guide

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The Federal Energy Management Program (FEMP) helps Federal personnel explore the possibilities of working with utilities by providing educational and informational tools.

FEMP helps Federal agencies and their utility companies work together to save energy and dollars at Federal facilities. FEMP supports agencies and their utilities by promoting Federal/utility partnerships, supplying alternative financing information, sponsoring utility-related training, removing regulatory barriers, providing information on utility restructuring and its effects on Federal agencies, and more.

FEMP's Financing Team provides policy guidance and technical and contracting assistance related to private-sector funding for Federal energy efficiency, renewable energy, and water conservation projects.

### For More Information

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A list of FEMP contacts at U.S. Department of Energy (DOE) local regional offices is included in this book.

### FEMP Web site

Check out the latest FEMP information at [www.eren.doe.gov/femp](http://www.eren.doe.gov/femp).

### FEMP Help Desk

FEMP Help Desk staff provides answers to general questions, direct queries to the appropriate representative, and distributes publications and other materials available through FEMP. Call 1-800-363-3732.

## **Workshops**

FEMP offers Utility Financing and Utility Restructuring Workshops targeted to Federal facility and energy managers, procurement personnel, and management and legal staff.

For more information about these workshops, call the FEMP Workshop Hotline at 703-243-8343.

## **Federal Utility Partnership Working Group (FUPWG)**

FUPWG exists to establish partnerships and facilitate communication between Federal agencies, utilities, and energy service companies. The group works to develop strategies to facilitate cost-effective energy efficiency, water conservation, and renewable energy projects at Federal sites. FUPWG helps to identify how all utilities can work with Federal agencies to meet the goals of EPCA and EO 13123. The group also prepares agencies for upcoming changes in the electric utility industry and provides information regarding recent technological developments in the areas of energy efficiency and water and wastewater conservation.

FUPWG meets three times a year to exchange information on recent utility incentive program success stories, current FEMP programs and products, individual agency energy-management programs, and reports from various working groups. Both Federal and utility representatives are welcome. For more information on FUPWG, visit the FEMP Web site at <http://www.eren.doe.gov/femp/utility/fupwg.html>.

## **FEMP Partner Resource Centers**

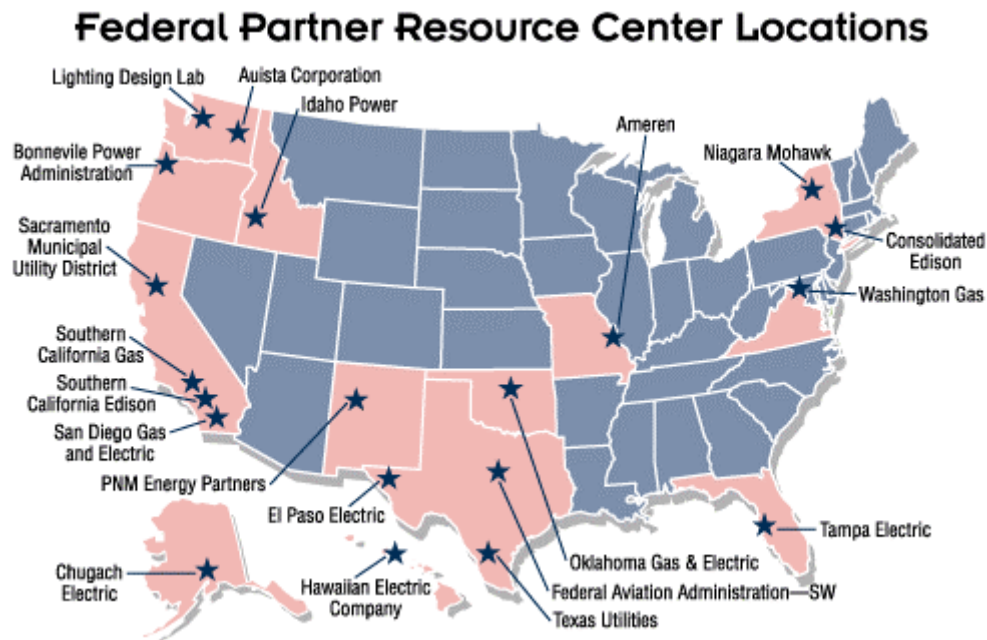
By reaching out to the energy-management community, FEMP has found a new way to carry out its mission and meet its goals through cooperative partnerships. Expanding its network of partners to promote energy efficiency, water conservation, and the use of renewable energy in Federal facilities, FEMP has established Federal Partner Resource Centers across the United States.

Each center has dedicated facilities, computers, communications capabilities, and personnel to provide training and technical assistance to Federal customers. Center hosts know about the Federal facilities located within their region and help Federal customers take advantage of appropriate energy efficiency and utility programs, rate offerings, and services. They also know about legislative and other requirements affecting Federal customers and can offer additional solutions and resources to augment those provided by FEMP. By leveraging our partners' resources to help make FEMP's own resources more accessible, FEMP's ability to assist Federal agencies in achieving mandated energy efficiency and water conservation goals is greatly enhanced. In addition, when conducted at resource centers using their staff support, training courses in facility energy management developed by FEMP have found enthusiastic new audiences.

FEMP continues to identify qualified partners willing to establish new centers. Federal energy managers and their staff are strongly encouraged to take advantage of this valuable opportunity made possible by FEMP and its partners by visiting one of these centers. To test the most recent versions of FEMP software tools, obtain training information, identify cost-saving arrangements, and pick up technical information that provides the latest ideas for using energy and water more efficiently, it takes just a phone call to the nearest center. The map below identifies Federal Partner Resource Center locations, and a list of resource center contacts can be found on the following page.

### ***For More Information***

For additional information, or if your organization is interested in establishing its own center, contact Brad Gustafson at 202-586-5865 to obtain a Resource Center information package. In addition, FEMP staff at DOE regional offices have similar capabilities to serve you. A list of FEMP contacts at DOE local regional offices is included in this book.





## **Resource Center Contacts**

Ameren (formerly Union Electric)  
Susan Davis, susan\_m\_davis@ameren.com  
314/554-6336  
1901 Chouteau Ave.  
St. Louis, MO 63166-6149  
www.ameren.com

El Paso Electric  
Leanne Hedrick, lhedri1@epelectric.com  
915/543-4058  
123 W. Mills  
El Paso, TX 79901  
www.epelectric.com

Avista Corporation (formerly Washington  
Water Power)  
Laurie Heagle, lheagle@wwpco.com  
800/727-9170 or 509/482-4967  
1411 E. Mission Street  
Spokane, WA 99220-3727  
www.avistacorp.com

Hawaiian Electric Company  
Steve Lockett, sluckett@hei.com  
808/543-4646  
Honolulu, HI 96840  
www.hei.com

Bonneville Power Administration  
Sheila Morton, sdfairley@bpa.gov  
503/230-5991  
905 NE 11th Ave. - NG-1  
Portland, OR 97232  
www.bpa.gov

Idaho Power Company  
Mike Gerhard, mgerhard@idahopower.com  
208/388-6453  
1221 W. Idaho St.  
Boise, ID 83707  
www.idahopower.com

Chugach Electric Association  
Peter Poray,  
Peter\_Poray@chugachelectric.com  
907/563-7494  
5601 Minnesota Dr.  
Anchorage, AK 99519  
www.chugachelectric.com

Lighting Design Lab  
Randy Smith, randy@northwestlighting.com  
206/325-9764  
400 E. Pine Street., Suite 100  
Seattle, WA 98122  
www.northwestlighting.com

Con Ed Solutions  
John Mitchell, mitchellj@conedsolutions.com  
914/286-7015  
Bob Damato  
718/472-6080  
701 Westchester St.  
White Plains, NY 10604  
www.conedsolutions.com

Niagara Mohawk  
Nat Hancock,  
hancockn@niagaramohawk.com  
518/433-5201  
111 Washington Ave.  
Albany, NY 12210-2209  
www.nimo.com

Regional Offices:  
125 Broadway, Albany, NY  
535 Washington St., Buffalo, NY  
300 Erie Blvd., Syracuse, NY

Department of Transportation, FAA-SW  
Region  
Moni Jacob  
817/222-4725  
2601 Meacham Blvd.  
Fort Worth, TX 76137

Oklahoma Gas & Electric  
Gary Marchbanks, marchbgj@oge.com  
405/553-8188  
101 N. Robinson St.  
Oklahoma City, OK 73101  
www.oge.com

PNM Energy Partners  
Jeanette Chavez, jchavez4@phm.com  
505/241-4296  
320 Gold SW, 7th Floor  
Albuquerque, NM 87102  
www.pnm.com

Sacramento Municipal Utility District  
Allan Suleiman, asuleim@smud.org  
916/732-6834  
6301 S Street  
Sacramento, CA 95817  
www.smud.org

San Diego Gas & Electric  
Dave Juebert  
858/654-1578  
Jesse Sandoval  
8306 Century Park Ct.  
Suite 4222A  
San Diego, CA 92123-1593  
www.sdge.com/uic/

Southern California Edison  
Bill Bryan, bryanw@sce.com  
909/394-8502 x47502  
6090 N. Irwindale Ave.  
Irwindale, CA 91702  
www.sce.com

Southern California Gas Company  
Susan Tong, stong@socalgas.com  
562/803-7403  
Earl Plummer, eplummer@socalgas.com  
310/803-7317  
9240 East Firestone Blvd.  
Downey, CA 90241  
www.socalgas.com

Tampa Electric Company  
Robert Collins, recollins@tecoenergy.com  
813/228-1367  
Kim Estreda  
813/202-1772  
Tampa, FL 33601-0111  
www.tecoenergy.com

Center located at:  
University of South Florida  
Energy Technology Resource Center  
3650 Spectrum Blvd, Suite 100  
Tampa, FL 33612

Texas Utilities  
Ed Cooley, ecooley@txu.com  
214/812-2713  
Energy Plaza  
1601 Bryan St.  
Dallas, TX 75310-0001  
www.txu.com

Washington Gas  
6801 Industrial Rd.  
Springfield, VA 22151  
www.washgas.com

## **UESC Model Agreement**

The Department of Defense (DOD) and DOE worked with the Edison Electric Institute (EEI) to develop separate Civilian and DOD model agreements to expedite contracting between DOD and its utility, as well as civilian Federal agencies and their utilities. A new *UESC Model Agreement*, which is a combination of the civilian and DOD agreements that may be used by any agency, is included in this book. If you would like a copy of a specific version of a model agreement, you may download a copy of the *EEI/DOD Model Agreement* via the Internet at <http://www.eei.org/esg/other/dod.htm>. A copy of the *DOE/EEI Civilian Model Agreement* is also available on the Internet at [http://www.eren.doe.gov/femp/utility/doeeei\\_agree.html](http://www.eren.doe.gov/femp/utility/doeeei_agree.html).

## **GSA Areawide Utility Contracts**

GSA areawide contracts (AWCs) are between GSA and a utility-service supplier to cover utility service needs of Federal agencies within the franchised territory of the supplier. AWCs spell out the general terms and conditions of the utilities' services, contain all applicable Federal clauses, and provide instructions for Federal agency use. They provide simple, standardized procedures for ordering services.

GSA AWCs are usually awarded for a period of 10 years or more and may be renewed. Delivery orders under an AWC may also cover periods up to 10 years, and sometimes longer. AWCs allow agencies to negotiate special rates and satisfy any unusual utility requirements. Such special arrangements are included in an addendum to an agency's authorization form (see Article 1.1(a) of the GSA AWC).

A copy of the GSA Model Areawide Contract is included in this book.

## U.S. Department of Energy Local Regional Contacts



### **Central**

Denver Regional Office  
Randy Jones, 303-275-4814  
randy\_jones@nrel.gov  
1617 Cole Boulevard  
Golden, Colorado 80401  
FAX: 303-275-4830

### **Northeast**

Boston Regional Office  
Paul King, 617-565-9712  
paul.king@hq.doe.gov  
JFK Federal Building, Suite 675  
Boston, Massachusetts 02203  
FAX: 617-565-9723

### **Mid-Atlantic**

U.S. Department of Energy  
Bill Klebous, 212-264-0691  
william.klebous@hq.doe.gov  
26 Federal Plaza, Room 39-105  
New York, New York 10278  
FAX: 212-264-2272

### **Southeast**

Atlanta Regional Office  
Doug Culbreth, 919-782-5238  
carson.culbreth@hq.doe.gov  
221 Ellwood Drive  
Raleigh, North Carolina 27609  
FAX: 919-788-0996

### **Midwest**

Chicago Regional Office  
Sharon Gill, 312-886-8573  
sharon.gill@hq.doe.gov  
1 South Wacker Drive, Suite 2380  
Chicago, Illinois 60606-4616  
FAX: 312-886-8561

### **Western**

Seattle Regional Office  
Cheri Sayer, 206-553-7838  
cheri.sayer@hq.doe.gov  
800 Fifth Avenue, Suite 3950  
Seattle, Washington 98104  
FAX: 206-553-2200

## UESC Model Agreement

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In the early days of implementation of the authority for Federal facilities to enter into utility energy services contracts, each Federal facility met with their local providing utility company and through negotiation developed their own contract documents. This was time consuming for the facility managers and led to delays while higher authority reviewed the documents for legal and contract administration conformity. The process was also time consuming for the utility companies since they typically deal with the facilities of more than one Federal agency. This often led to significant differences in contract language between facilities – which made it difficult for the utilities to get approval within their organization.

Recognizing the benefit of a uniform, approved set of standard contract terms and conditions, representatives of the Edison Electric Institute (representing the investor-owned utility companies) and technical, legal, and contract officers of the Department of Defense, the Department of Energy, and other agencies, met to develop such language. The resulting Model Agreements, reviewed and approved by authorities from both the public and private sectors, include approximately 80% of the necessary terms and conditions for a utility energy services contract. Most of the additional information that is needed includes site specific scope of work direction. Of course each individual contract must be developed by a Federal contract officer and mutually agreed to by the providing utility. The value of using the Model Agreement is that it provides Federal and utility personnel an assurance that the language has been used successfully many times since its development.

AGREEMENT FOR ENERGY CONSERVATION AND DEMAND  
SIDE MANAGEMENT SERVICES

BETWEEN

THE UNITED STATES OF AMERICA

AND

\_\_\_\_\_ UTILITY COMPANY

This Agreement for implementation of Energy Conservation Measures (ECMs) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between \_\_\_\_\_ Utility Company (Utility) and the United States of America (Government), represented by the Contracting Officer executing this Agreement. The signatories to this Agreement will be sometimes collectively referred to as the "Parties" and individually as a "Party." This Agreement (when signed by the Parties), any Task Orders (T.O.) executed pursuant to this Agreement, and any other associated agreements shall constitute the entire Contract between the Parties with respect to a particular ECM. A term or condition contained in this Agreement may be amended at any time by mutual written agreement of the Parties. However, termination, modification, or expiration of a term or condition shall not retroactively affect T.O.s previously entered into under this Agreement.

The Parties agree to the following principles, concepts and procedures:

**GENERAL CONDITIONS**

**GC.1 Purpose.** The Government desires assistance in accomplishing ECMs at \_\_\_\_\_ Installation ("Installation") (may substitute "at all Installations within the Utility Company's service area, to include [list the installations by name] ("hereinafter, "Installations)"). The purpose of this Agreement is to facilitate the implementation of ECMs through T.O.s. This Agreement sets forth the terms and conditions under which subsequent T.O.s may be entered into between the Parties.

**GC.2 Definitions.** Terms used in this Agreement shall have the following definitions:

**Acceptance** - Written acceptance by the authorized representative of the Government of an individual Phase or completed ECM pursuant to a T.O.

**Agency** - Any civilian Agency or establishment in the legislative or judicial branches of the Federal Government, or any mixed ownership corporation, as defined in the Government Corporation Control Act.

**Carrying Charge** - For the purpose of this Agreement, Carrying Charge shall be an interest rate applied to all ECM Costs incurred by the Utility until permanent financing is put in place or the Government pays the ECM Cost. Accrued interest shall be considered an ECM Cost.

**Contracting Officer** - A Government official authorized to enter into, administer, and/or terminate a contract on behalf of the Government, and who is authorized to make related determinations and findings within the limits established pursuant to Government regulations.

**Contracting Officer's Representative (COR) or Contracting Officer's Technical Representative (COTR)** - A local or project site representative of the Contracting Officer delegated specific limited authority, as set forth in a formal delegation letter signed by the Contracting Officer, for a given T.O.

**Energy Conservation Measure (ECM)** - One or more ECPs completed, or to be completed, under a T.O. including the feasibility study, engineering and design, operation and maintenance, and/or implementation of one or more ECPs, which include, but are not limited to, energy and water conservation, energy efficient maintenance, energy management services, facilities alterations, and installation and maintenance of energy saving devices and technologies. ECMs should have a positive net present value over a period of 10 years or less, as required by the prevailing utility services contract term limitation per Federal Acquisition Regulation (FAR) Part 41.

**Energy Conservation Measure Cost (ECM Cost)** - The total cost may include, but is not limited to the Work, finance charges and overhead and profit, for the feasibility study, engineering and design, implementation and operation and maintenance of an ECM, less any financial incentive or rebates, if provided by the Utility. Payment for completed ECMs shall be calculated based upon the ECM Cost.

**Energy Conservation Project (ECP)** - A specific project intended and designed to provide any of the following: energy savings, demand reduction, efficiency improvements and water conservation. ECPs are described in more detail in Section GC 17.

**Government** - Same as Agency.

**Occupied Period** - Hours during which a facility or building is occupied or used in the normal course of business.

**Quality Assurance Evaluator (QAE)** - A functionally qualified person who evaluates or inspects the contractor's performance of service in accordance with the quality assurance surveillance plan written specifically for the contracted service to be evaluated. The QAE performs technical monitoring of contractor actions, is responsible for requesting products and services through a government contract, and manages the day-to-day tasks of the contract.

**Quality Control** - A management function whereby control of quality of raw or produced material is exercised for the purpose of preventing production of defective material. For purposes of this Agreement, quality control is those actions taken by a contractor to control the production of outputs to ensure that they conform to the contract requirements.

**Possession** - When the Government takes beneficial occupancy of an ECP ("Possession of an ECP") or an ECM ("Possession of an ECM").

**Subcontractor** - Any corporation, partnership or individual hired directly by the Utility to perform a service or provide a product under this Agreement and T.O.s resulting from this Agreement.

**Task Order (T.O.)** - A binding contractual action entered into under this Agreement for the feasibility study, engineering and design, implementation, and/or operation and maintenance of, or any activity related to an ECM. (A T.O. can also be identified as a Delivery Order (D.O.).)

**Termination Schedule** - A schedule developed for each financed ECM specifying the lump sum payment necessary, at any time during the contract period following the initial Government payment, for the complete repayment of the ECM Costs, including any finance costs accrued to that point.

**Utility** - A public or investor owned utility company that falls under the regulation of a State Public Utilities Commission.

**Work** - All labor, materials, tools, equipment, services, transportation and/or other items required for the completion of the ECM.

**GC.3 Term.** This Agreement shall have a term of \_\_\_\_ years. The term may not exceed ten (10) years. This Agreement may be terminated in its entirety by either Party upon thirty (30) days written notice to the other Party. Thereafter, no new T.O.s shall be entered into under this Agreement. Termination, modification or expiration of this Agreement shall not affect in any way T.O.s previously entered into under this Agreement. This Agreement shall be effective from the date it is signed by both Parties. In the event the Parties sign this Agreement on different dates, then the effective date shall be the latter of the two dates.

**GC.4 Services to be Provided by the Utility.** The Utility shall provide preliminary audits, feasibility studies, engineering and design studies, and all initial capital, labor, material, supplies and equipment to identify, implement, operate or maintain ECMs in accordance with T.O.s entered into pursuant to this Agreement. These services may be ordered individually, as a group or in any combination under a single T.O.

**GC.5 Information.** Subject to national security constraints and unless otherwise prohibited by law, the Government shall provide the Utility with any information requested by the Utility to comply with regulatory commission requirements.

**GC.6 Relationship of Parties.** The Government acknowledges that the Utility and/or its Subcontractors shall each perform their work as independent contractors and the Government shall have no direct control and supervision of Utility or Subcontractor employees, who shall not be considered employees or agents of the Government for any purpose. The Utility, in negotiations with its Subcontractors, will ensure that the Government will be the direct beneficiary of any and all product and service guarantees and warranties.

**GC.7 Subcontractor Selection.** The Utility may perform some or all of the Work under a Task Order itself or through Subcontractors. When practical, the Utility shall competitively select Subcontractors for the purpose of



determining the reasonableness of Subcontractor prices. When competition is not practical, price reasonableness may be determined by comparing proposed prices with those obtained for the same or similar work, prices published in independent cost guides, published in competitive price lists or developed by independent sources.

Subcontractor selection shall be based on cost, experience, past performance, reliability, and such other factors as the Utility may deem appropriate, as long as such factors are practicably related to the Government's minimum needs. In no event may such services be provided by Subcontractors listed as excluded from Federal Procurement Programs, which list is maintained by GSA pursuant to 48 C.F.R. 9.404. For any T.O., the Utility may submit the names of proposed Subcontractors to the Government Contracting Officer to ensure they are not excluded pursuant to 48 C.F.R. 9.404.

**GC.8 Authority of Contracting Officer.** The Government 's Contracting Officer shall be the only Government official authorized to enter into and/or modify a T.O. entered into under this Agreement.

**GC.9 Ownership of Work Product.** The Government may elect not to use the Utility to implement the ECM. If the Government so elects, it will pay for any accepted work, including any equipment, completed studies, and engineering and design work. Title to any work done by the Utility for the Government under a T.O. shall become the property of the Government at the time of Acceptance of the Work.

**GC.10 Responsibility for Operations and Maintenance.** The operation and maintenance of the equipment installed pursuant to any T.O. executed under this Agreement shall be the responsibility of the Utility during the payment term unless otherwise provided in the T.O.

**GC.11 Government Projects.** The Government shall not be restricted from implementing equipment installation, construction projects and ECMs independent of work performed under this Agreement, including installing new energy conservation equipment, removing existing energy consuming equipment, or adding new energy consuming equipment. The Government will notify the Utility prior to implementing projects that may affect ECMs under this Agreement.

**GC.12 ECM Performance Verification.** Each T.O. shall include procedures that are mutually agreeable to the parties to verify ECM performance following installation.

**GC.13 Emission Credits.** All on site Government emission credits earned by virtue of T.O.s entered into hereunder shall be the property of the Government.

**GC.14 Order of Precedence.** The Government and Utility shall determine in this Agreement or subsequent T.O.s the precedence given to the T.O., this Agreement or other documents, exhibits and attachments in the event an inconsistency arises among these documents.

**GC.15 Preliminary Audits.** At the request of the Government or the Utility and upon the mutual consent of both parties, the Utility will conduct, at no cost to the Government, an audit consisting of an on-site building investigation and evaluation for a mutually agreeable facility to

determine if any significant energy conservation opportunities exist and whether further detailed energy analysis is warranted. Government buildings/facilities plans will be made available upon request. Requests for plans shall be made to the COR at least fifteen (15) calendar days in advance of the audit start date. The Utility will provide a written report of the audit to the Government, normally at no cost. The Utility will utilize historical building data, utility data, and information obtained by the Utility to identify ECPs. Using this information, the Utility will generate a prioritized list of recommendations, in sequence of implementation, that are life-cycle cost effective and can be implemented in the facility being audited. The preliminary audit, to the extent applicable, shall include but not be limited to the following information:

- (a) Preliminary estimated energy and water savings,
- (b) Preliminary estimated cost savings, including reduced maintenance costs,
- (c) Current utility rates,
- (d) Preliminary retrofit cost,
- (e) Utility financial incentive/rebate, if any,
- (f) Description of existing equipment,
- (g) Description of the proposed retrofit equipment,
- (h) Overview of the general environmental impact and potential hazardous wastes identified through existing facility records, if any.

**GC.16 ECM Proposal.** After reviewing the preliminary audit, the Government may request a proposal from the Utility, for the evaluation of an ECM. The Utility shall submit an ECM proposal setting forth a prioritized list of the recommended ECPs within the ECM, a preliminary estimate of the cost to implement each ECP, the total costs for implementing the ECM (including estimated feasibility study, engineering and design, and implementation costs), and estimated cost savings.

**GC.17 Energy Conservation Projects.** The Utility may propose ECMs which include one or more ECPs. ECPs that substitute one energy type for another (e.g., natural gas in lieu of electricity) will not be considered for implementation unless a net overall energy or cost reduction can be demonstrated, based on current market energy prices. Potential ECPs include, but are not limited to:

- (a) Interior and exterior lighting replacement,
- (b) Transformer replacement,
- (c) Lighting control improvements,
- (d) Motor replacement with high efficiency motor,
- (e) Construction of alternative generation or cogeneration facilities,
- (f) Boiler control improvements,
- (g) Packaged air conditioning unit replacement,
- (h) Cooling tower retrofit,
- (i) Economizer installation,
- (j) Energy management control system (EMCS) replacement/alteration,
- (k) Occupancy sensors,
- (l) LED exit sign installation,
- (m) Fans and pump replacement or impeller trimming,
- (n) Chiller retrofit,
- (o) Upgrade of natural gas-fired boilers with new controls (low NOX burners),
- (p) Solar domestic hot water system,

- (q) Solar air preheating system,
- (r) Steam trap maintenance and replacement,
- (s) Insulation installation,
- (t) Variable speed drive utilization,
- (u) Weatherization,
- (v) Window replacement,
- (w) Window coverings and awnings,
- (y) Reflective solar window tinting,
- (z) Fuel cell installation,
- (aa) Photovoltaic system installation,
- (bb) Faucet replacement (infrared sensor),
- (cc) Replacement of air conditioning & heating unit with a heat pump,
- (dd) Addition of liquid refrigerant pump to a reciprocating air conditioning unit,
- (ee) High efficiency refrigerator replacement,
- (ff) High efficiency window air conditioner replacement,
- (gg) Water conservation device installation (e.g., flow restrictors, low flow flush valves, waterless urinals, horizontal axis washing machines),
- (hh) Installation, maintenance and operation of power quality and reliability measures including UPS systems, back-up generators, emergency generators, etc.,
- (ii) Fuel switching technology,
- (jj) Infrared heating system,
- (kk) Heat pipe dehumidification,
- (ll) Flash bake commercial cooking,
- (mm) Thermal energy storage system,
- (nn) Operation, maintenance, modification and/or extension of utility distribution and collection system,
- (oo) Training that will result in reduced energy costs,
- (pp) Power factor correction measures and equipment,
- (qq) Installation, maintenance and operation of standby propane facility,
- (rr) Installation, maintenance and operation of gas distribution system and associated equipment,
- (ss) Water distribution system leak detection, and cost effective repair,
- (tt) Any other ECP that is cost effective using the then current DoD prescribed procedures and standards, and which encourages the use of renewable energy, reduces the Government's energy consumption or energy demand or results in other energy infrastructure improvements.

**GC.17.1 ECM Restrictions.** The Government shall not consider ECMs which include:

- (a) Measures which could jeopardize existing Agency missions,
- (b) Measures which could jeopardize the operation of, or environmental conditions of, computers or computer rooms,
- (c) Unless waived by the Contracting Officer, measures that would result in increased water consumption (e.g., once-through fresh water cooling systems),
- (d) Measures which would violate any federal, state, or local laws or regulations,
- (e) Measures which degrade performance or reliability of existing Government equipment,

- (f) Unless waived by the Contracting Officer, measures that would reduce energy capacity currently reserved for future growth, mobilization needs, safety, emergency back-up, etc.,
- (g) Measures that violate the then current versions of the National Electric Code, the National Electric Safety Code, the Uniform Building Code or the Uniform Mechanical Code,
- (h) Utility financed measures that do not result in savings in the base utility expenditures sufficient to cover the project costs.

**GC.17.2 Facility Performance Requirements of ECMs.** ECMs proposed by the Utility shall conform to the following facility performance standards:

- (a) Lighting levels shall meet the minimum requirements of the then current Illuminating Engineering Society (IES) Lighting Handbook,
- (b) Heating and cooling temperature levels shall meet Government design standards,
- (c) ECMs shall permit flexible operation of energy systems for changes in occupancy levels and scheduling of facilities. In proposing an ECM, the Utility may assume the building function will remain constant unless otherwise indicated by the Government.

**GC.18 Task Orders.** Following the evaluation of the ECM proposal, the Government may elect to execute a T.O. with the Utility for the evaluation, implementation or operation and maintenance of the ECM. If requested by the Government, the Utility will provide or obtain financing on terms at least as good as those available to customers in a comparable service class, or with a comparable risk profile, considering the nature of the security interests to be granted, if any, and other conditions affecting the cost of financing.

The T.O. may have five phases; Audit (when applicable), Feasibility Study Phase, Engineering and Design Phase, Implementation Phase and Operation and Maintenance Phase. Because the extent of all the work is unlikely to be known at the time the T.O. is entered into, these phases shall be line items under the T.O., and shall be issued with an estimated Termination Schedule at the time the T.O. is executed. However, work will not commence on a particular phase unless and until a statement of work and a price for that phase have been agreed upon.

Following completion and Acceptance of the Feasibility or Engineering and Design Phases, the Government may elect to (i) pay the ECM Cost for each completed Phase within thirty (30) calendar days of being invoiced, or (ii) defer payments for that Phase until the end of the next Phase at which time the Government shall pay the ECM Cost for each completed Phase within thirty (30) calendar days of invoice, or (iii) include such amounts in the ECM Cost, if the Government elects to proceed with the Implementation Phase. If the Government elects not to proceed with the next Phase, it shall pay the Utility the ECM Cost for the prior completed Phases, plus a Carrying Charge as negotiated by the parties in the T.O. A decision to proceed or not to proceed with the next Phase must be made within sixty (60) days of receipt of a written request from the Utility. Only the Contracting Officer shall be authorized to exercise the Government's option to proceed to the next Phase, and such exercise shall be provided in writing within sixty (60) days of receipt of a statement of work and price.

Government finance payments for the Implementation Phase shall begin on the date of the first Utility bill following the 30 day period after the Government takes possession of all or part of the ECM as provided in FAR, Part 36, Subpart 36.511, and a satisfactory ECM Performance Verification as defined in the T.O. and pursuant to Section GC.12 of this Agreement.

The timing and amount of Government payments of appropriated funds for the Operations and Maintenance Phase shall be determined in the T.O.

The T.O. shall be subject to any legally required Federal Acquisition Regulations. Because services may vary widely from one T.O. to another, the Contracting Officer will insure that the appropriate FAR clauses from the FAR matrix found at FAR, Part 52, Subpart 52.301, are incorporated into any contract entered into by the parties for services provided by the Utility under the T.O.

**GC.19 ECM Feasibility Study Phase.** The Task Order shall set forth a scope of work for a detailed study to determine whether particular ECMs proposed by the Utility are feasible (the "Feasibility Study"). The Task Order shall specify the terms for the completion of the Feasibility Study and establish a price for the Feasibility Study. The Government will pay the Utility the agreed-upon price for the Feasibility Study in accordance with the T.O. If the Government elects to proceed with the Engineering and Design Phase as set forth below in Paragraph GC.20, the cost of the Feasibility Study shall be rolled into the Engineering and Design Phase ECM Cost. The Feasibility Study will provide, at a minimum, the following information:

Technical Factors:

- (a) Audits of energy consumption of existing equipment and facilities, including estimated energy and cost savings, and proposed retrofit costs and financial incentives/rebates,
- (b) Water audits of supply and utilization facilities, if specified by the Government,
- (c) Equipment to be removed or replaced, and new equipment to be installed,
- (d) Specifications, including catalog cuts, for new equipment. Specifications should include (as applicable): power rating, estimated energy consumption, input/output, power ratio, lighting level and estimated equipment life,
- (e) Operation and maintenance procedures required after ECM implementation (if significantly altered by the ECM),
- (f) Training that will be provided for the proper operation and maintenance of ECPs, including details on how many hours of training will be provided and how many people will be trained,
- (g) Electrical and mechanical sketches for all ECPs that involve changes to existing systems, (sketches will not be required for ECPs involving only component replacement),
- (h) Government support (e.g. minor changes in Government operations, movement of equipment, etc.) required during implementation of the ECM,
- (i) Utility interruptions needed for implementation of each ECP by type (gas, electricity, water, etc.), extent (room number, entire building, etc.) and duration,
- (j) Identification of potential adverse environmental effects,

- (k) Any documentation required to comply with applicable environmental laws,
- (l) The estimated construction time in calendar days, showing significant milestones,
- (m) The estimated annual energy savings in kilowatt-hour and kilowatt demand of electricity, decatherms of natural gas and cubic feet of water for the life of each ECP, including all assumptions and detailed calculations showing how savings were determined,
- (n) The estimated equipment life for each ECP,
- (o) A proposed method to verify energy savings at the time of ECM Acceptance which shall be subject to Government approval,
- (p) Documentation that each proposed ECP has been recommended and selected without regard to fuel source;

Cost Factors:

- (q) Estimated annual operation costs (e.g. increased use of alternate fuel sources, replacement filters) and increased maintenance costs (e.g. relamping with a higher cost product, etc.),
- (r) Total estimated ECM Cost to the Government,
- (s) Estimated breakdown of financial incentives/rebates for each ECM (if any) in a format mutually agreeable to the Parties,
- (t) Estimated Cost-of-Money Rate (percent),
- (u) Estimated annual energy and operations and maintenance cost savings including details on estimated annual savings for each area of savings, such as lighting, controls, motors and transformers,
- (v) Estimated breakdown of implementation costs for each area of energy savings, such as lighting, controls, motors and transformers,
- (w) Estimated costs for replacing existing components and installing new components/systems shall be listed separately,
- (x) Estimated unit costs for major components and systems,
- (y) Estimated Life Cycle Cost Analysis prepared in accordance with the then current edition of the Energy Prices and Discount Factors for Life-Cycle-Cost Analysis, published as the annual supplement to the National Institute of Standards and Technology (NIST) Handbook 135.

**GC.20 ECM Engineering and Design Phase.** After evaluation and Acceptance of the feasibility study, the Government may elect to proceed with the Engineering and Design Phase. Prior to proceeding, the Parties shall agree upon a statement of work for all engineering and design services necessary for the implementation of a particular ECM, a time frame for completion of the work, and a price or cost cap for engineering and design work for the ECM. If the Government elects to proceed with the Implementation Phase as set forth below, the cost of the engineering and design work shall be rolled into the total ECM Cost. This T.O. shall include an estimated amortization schedule for the ECM.

**GC.20.1 Verification of Floor Plans.** The Utility will verify the accuracy of any floor plans provided by the Government.

**GC.20.2 Government Design Review.** Task Orders shall permit adequate time for Government review of engineering and design work at 35% and 95% design completion, or at any other stage, as negotiated in the T.O.

**GC.20.3 Site Plans.** If proposed ECMS require installation outside existing buildings or structures, a site plan showing recommended siting of ECMS shall be prepared for Government review and approval. Site plans

shall be submitted as part of the Utility's proposal. It is recommended that the Utility propose alternate sites for review in case the primary site is unavailable.

**GC.20.4 ECM Implementation Proposal.** Upon completion and Acceptance of the Engineering and Design Phase, the Utility will submit to the Government an ECM implementation proposal (the "Proposal"). If requested by the Contracting Officer, the Utility will be required to present a briefing to the Government explaining the Proposal. At a minimum, the Proposal shall include all pertinent technical and cost factors listed in Paragraph GC.19 of this Agreement plus a copy of subcontractor(s) bid(s). The Proposal shall also set forth negotiated pricing criteria that describes the method for determining the prices to be paid to the Utility for supplies or services. The Government shall evaluate the Proposal for technical soundness and price reasonableness. If the Government elects to proceed with the ECM, the Utility and Government shall agree upon a complete scope of work with specifications, time for performance, ECM Cost, source and cost of capital or financing, payment terms, amortization schedule and final Termination Schedule. If the Contracting Officer deems it appropriate, the Utility will provide acceptable performance and payment bonds.

**GC.21 ECM Implementation Phase.** The Utility shall perform work in accordance with the T.O. The following provisions shall apply to ECM implementation work performed pursuant to T.O.s executed under this Agreement, unless exceptions are provided in the T.O.

**GC.21.1 Pre-Work Requirements.** Prior to commencing ECM implementation Work on a T.O., the Utility shall meet with the Contracting Officer or COR at a time mutually agreeable to the Utility and the Contracting Officer, to discuss and develop mutual understandings relative to safety, scheduling, performance, obtaining necessary permits, and administration of the Implementation Phase. Prior to commencement of on-site work, written approval of the following shall be obtained from the Contracting Officer by the Utility:

- (a) Utility's proposed implementation schedule indicating the installation period and time required for delivery of equipment,
- (b) Evidence that the required insurance has been obtained.

**GC.21.2 Interruptions.** The Utility shall arrange on-site work to minimize interference with normal Government operations. All interruptions shall be made outside occupied periods whenever possible and coordinated with the Contracting Officer or COR. The Utility shall endeavor to keep the duration of utility interruptions to a minimum. Requests for utility outages shall be submitted for approval, in writing, as specified in the T.O. The request shall include the approximate duration, date, time and reason for the interruption. Utility interruptions include, but are not necessarily limited to, the following systems:

- (a) Electrical,
- (b) Natural Gas,
- (c) Sewer,
- (d) Steam,
- (e) Water,
- (f) Telephone,
- (g) Computer cables.

**GC.21.3 Construction Documentation.** The Utility shall provide construction drawings and specifications, certified by a registered engineer or architect, as applicable, to ensure compliance with all applicable federal, state and local codes and regulations as required by individual T.O.s.

**GC.21.4 Standardization of Materials.** All materials proposed to be installed pursuant to this Agreement shall be readily, commercially available, and as similar in form, fit and function to each other as is practicable to allow efficient provisioning of replacement parts.

**GC.21.5 Water Conservation Measures.** The Utility will consider water conservation in all ECMs. The Utility will obtain rebates from the local water utility if available. Rebates, if any, shall be applied to the cost of the project.

**GC.21.6 Operation and Maintenance Manuals.** At the time of Government Acceptance of a completed ECM, the Utility shall furnish, for the equipment specified, operation and maintenance manuals and recommended spare parts lists identifying components adequate for competitive supply procurement for operation and maintenance of ECM equipment. The operation and maintenance manuals shall include maintenance schedules for all equipment. The scope of each manual shall be agreed upon in the T.O.

**GC.21.7 Government Personnel Training for ECPs.** The Utility shall train Government personnel, as required, to operate, maintain, and repair ECM equipment and systems. The date and time of training shall normally be coordinated with the Contracting Officer or COR prior to Acceptance of the ECM. The cost for such training shall be included in the ECM Cost.

**GC.21.8 As-Built Drawings.** Within forty-five (45) calendar days after Government Acceptance of each installed ECM, the Utility shall submit as-built drawings to the Contracting Officer or COR. Drawings will not be required for component replacement. Drawings shall include at a minimum:

- (a) The installation (i.e., form, fit, and attachment details) of the interface between ECM equipment and existing Government equipment,
- (b) The location and rating of installed equipment on building floor plans.

**GC.21.9 Installation.** The Utility will arrange for the installation of approved ECMs and construction oversight and verify that the designed and specified energy efficiency equipment and/or system modifications are properly supplied or installed in a manner that will give the intended long term demand and energy reductions. The Utility will select Subcontractors in accordance with Paragraph GC.7 above.

**GC.22 Operation and Maintenance Phase.** The Government may elect to have the Utility perform the operation and maintenance on part or all of the ECM. Before exercising its option for this Phase, the Government and Utility shall agree upon a complete scope of work with specifications, schedules, warranties and cost.

**GC.23 Required FAR Clauses.** The following FAR clauses are required to be included in any contract with the Government:



52.203-3      Gratuities,  
52.203-5      Covenant Against Contingent Fees,  
52.203-7      Anti-Kickback Procedures,  
52.222-3      Convict Labor,  
52.222-25     Affirmative Action Compliance,  
52.222-26     Equal Opportunity,  
52.223-6      Drug Free Workplace,  
52.233-1      Disputes.

#### **Warranties and Remedies**

**WR.1 Warranties.**      The Utility shall pass through to the Government all warranties on equipment installed pursuant to a T.O. In addition, the Utility will provide, from the date of Acceptance or Government Possession of an ECP, whichever is earlier, a one year comprehensive wrap-around warranty guaranteeing that the equipment installed shall perform in accordance with the specifications agreed upon between Government and Utility, as set forth in the applicable T.O.

In the event the Utility provides O&M services, a separate warranty will be negotiated for such services, in accordance with FAR Part 52, Subpart 52.246-20.

**WR.2 No Other Warranties.**      The warranties set forth in WR.1 are exclusive and in lieu of all other warranties. The Utility makes no other representations or warranties of any kind with respect to the services and products it provides pursuant to this Agreement and subsequent T.O.s., The Utility does not guarantee any level of energy or water savings or cost reductions.

**WR.3 Utility Limitation of Liability.**      The Utility shall not be liable for any special, incidental, indirect, or consequential damages, connected with or resulting from the performance or non-performance of work under this Agreement or subsequent T.O.s. In addition, the Utility shall not be liable under its warranty to the extent that damages are caused by Government negligence.

**WR.4 Utility Default.**      The Government and Utility agree that Utility default provisions will be governed by those FAR clauses applicable to specific circumstances. A determination of applicable FAR default clauses will be made by the Contracting Officer for a specific T.O.

**WR.5 Prompt Payment.**      As required in FAR, Part 32, Subpart 32.903, the Government shall promptly pay ECM utility bills. Late payments shall accrue interest as provided in FAR, Part 32, Subpart 32.907.

**WR.6 Disputes.**      Disputes that arise under this Agreement and subsequent T.O.s shall be governed by the applicable dispute provisions found at FAR, Part 33, Subpart 33.2.

**WR.7 Differing Site Conditions.**      In the event site conditions differ materially from those contained in the T.O. additional costs incurred by the Utility due to the differing conditions shall be negotiated prior to work, and the ECM Cost shall be increased to reflect an equitable adjustment as permitted in FAR, Part 36, Subpart 36.502.

**WR.8 Suspension of Work.** In the event Work is delayed, suspended or stopped by the Government, FAR, Part 42, Subpart 42.13 shall apply.

## **FINANCING AND PAYMENT PROVISIONS**

**FP.1 Energy Savings and Financing.** It is intended that the annual energy savings achieved from the implementation of a Utility financed ECM under this Agreement will produce financial savings to the Government which are greater than the cost of implementing the ECM, including the cost of financing provided under this Agreement. The payment term cannot exceed ten years.

**FP.2 Financial Incentives, Rebates, and Design Assistance:** The Utility will provide to the Government the same financial incentives, rebates, design review, goods, services, and/or any other assistance provided without charge, that is generally available to customers of a similar rate class or size. Incentives that may be available are to be identified in the preliminary audit report provided according to Paragraph GC.15 and the ECM implementation proposal provided according to Paragraph GC.20.4.

**FP.3 Calculation of Payment.** Payment for accepted ECMs shall be equal to the ECM Cost amortized over a negotiated term. The cost of financing, if any, for any completed ECM shall be recovered under terms and conditions no less favorable than those for others in the same customer class. Monthly payments will commence on the date of the first Utility bill following the 30 day period after the date the Government takes Possession of the ECM and ECM Performance Verification Testing, as required by GC.12 and negotiated in the T.O., is satisfactorily completed.

**FP.4 Buydown.** The Government reserves the right, at any time following Acceptance, but prior to final payment, to buydown the outstanding T.O. payments without penalty by giving thirty (30) days written notice to the Utility. Upon such buydown, the Government shall pay to the Utility a negotiated percentage of the Termination Schedule amount. Monthly payments will continue at the same level but the term of ECM financing will be shortened to reflect the amount of the buydown payments.

**FP.5 Pre-Acceptance Termination.** In the event the Government desires to terminate a Task Order for any reason (including, without limitation, for convenience) prior to Acceptance, the Government may do so by giving written notice to the Utility thirty (30) days prior to the effective date of such termination. The Government shall pay the Utility an amount calculated using a formula agreed to by the Government and Utility and which will be Attachment A of the Task Order. If a termination occurs for the convenience of the Government, the amount payable pursuant to this paragraph shall be deemed as an allowable cost under FAR. (See Part 17 and Part 52, Subpart 52.249-2.)

**FP.6 Post-Acceptance Termination.** In the event the Government desires to terminate a Task Order for any reason (including, without limitation, for convenience) after Acceptance, the Government may do so by giving written notice to the Utility thirty (30) days prior to the effective date of such termination. The Government shall pay the Utility the amount set forth in

the Termination Schedule which shall be Attachment B of the Task Order. If a termination occurs for the convenience of the Government, the amount payable pursuant to this paragraph shall be deemed as an allowable cost under FAR. (See Part 17 and Part 52, Subpart 52.249-2.)

**FP.7 Assignment of Claims.** Government payments under each T.O. executed pursuant to this Agreement may be assigned pursuant to FAR, Part 52, Subpart 52.232.23 "Assignment of Claims." Any bank, trust company or other financing institution that participates in financing an ECM shall not be considered a Subcontractor of the Utility. Any "Assignment of Claims" must comply with the provisions of FAR, Part 32, Subpart 32.8.

**FP.8 Novation.** The Parties agree that if, subsequent to the execution of this Agreement, it should become necessary, or desirable, to execute a "Novation Agreement," said Novation Agreement will comply with the provisions of FAR, Part 42, Subpart 42.12 and will be in the form as provided at FAR, Part 42, Subpart 42.1204.

### **SPECIAL REQUIREMENTS**

**SR.1 Environmental Protection.** The Utility shall comply with all applicable federal, state and local laws, regulations and standards regarding environmental protection ("Environmental Laws"). All environmental protection matters shall be coordinated with the Contracting Officer or designated representative. The Utility shall immediately notify the Contracting Officer of, and immediately clean up, in accordance with all federal, state and local laws and regulations, all oil spills, hazardous wastes, (as defined at 42 U.S.C. §9601), and hazardous materials (as defined at 49 C.F.R. Pt. 172) collectively referred to as "Hazardous Materials," resulting from its operations on Government property in connection with the implementation of ECMs. The Utility shall comply with the instructions of the Government with respect to avoidance of conditions that create a nuisance or create conditions that may be hazardous to the health of military or civilian personnel.

**SR.2 Environmental Permits.** Unless otherwise specified, the Utility shall provide, at its expense, all required environmental permits and/or permit applications necessary to comply with all applicable federal, state and local requirements prior to implementing any ECM in the performance of a T.O. executed pursuant to this Agreement. If any such permit or permit application requires the signature or other cooperation of the Government as owner/operator of the property, the Government agrees to cooperate with the Utility in obtaining the necessary permit or permit application.

**SR.3 Handling and Disposal of Hazardous Materials.** Notwithstanding the provisions of the FAR, Part 52, Subparts 52.236-2 "Differing Site Conditions" and 52.236-3 "Site Investigations and Conditions Affecting Work", the Government understands and agrees that (i) the Utility has not inspected, and will not inspect, the project site in connection with a proposed ECM for the purpose of detecting the presence of pre-existing Hazardous Materials that relate to an ECM or any project site, and (ii) the Government shall retain sole responsibility for the proper identification, removal, transport and disposal of any fixtures, components thereof, or other equipment or substances incidentally containing pre-existing Hazardous Materials, except as specifically agreed to by the Utility pursuant to Paragraphs SR.4 and SR.5 (below).

If the Utility, during performance of the work under a T.O. executed pursuant to this Agreement, has reason to believe that it has encountered or detected the presence of pre-existing Hazardous Materials, the Utility shall stop work and shall notify the Government. The Government will evaluate the site conditions and notify the contractor of the results of this evaluation. The Utility shall not be required to recommence work until this situation has been resolved. Any delay resulting therefrom shall be grounds to request an increase in the ECM Cost to the extent that such delay increases ECM Costs.

**SR.4 Asbestos and Lead-Based Paint.** To the extent provided for in a T.O. executed pursuant to this Agreement, in connection with the implementation of any ECM, the Utility may agree to remove pre-existing asbestos containing material or lead-based paint, incidental to implementation of an ECM. However, unless the Utility explicitly agrees in said T.O. to perform any portion of the testing, removal or abatement of the pre-existing asbestos or lead-based paint as part of the scope of work for any ECM, and unless the T.O. specifically references this Paragraph SR.4, the Government shall be deemed to be solely responsible as provided for in Paragraph SR.3.

If the Utility in the course of ECM implementation disturbs suspected lead-based paint or asbestos containing material, the Utility may propose to the Government that the Utility will perform any portion of the testing, removal, or abatement of the lead-based paint or asbestos containing material. Said proposal will include the requested increase in the ECM Cost on account of such additional work. The Utility will not commence work involving additional cost without approval of the Contracting Officer. In the absence of an agreement to the contrary, the provisions of Paragraph SR.3. (above) shall apply.

In the event the Utility agrees to include any portion of the testing, removal or abatement of the asbestos within the scope of work for an ECM implemented as described above in this Paragraph, the hazardous waste manifests or other shipping papers shall identify the Government as the sole generator of the Hazardous Materials.

**SR.5 Refrigerants, Fluorescent Tubes and Ballasts.** To the extent provided for in a T.O. executed pursuant to this Agreement in connection with the implementation of any ECM, the Utility shall remove and/or dispose of all ozone depleting refrigerants, fluorescent tubes and fluorescent magnetic core and coil ballasts incidental to an ECM to the Hazardous Materials Disposal site (HAZMAT) on the installation. If there is no HAZMAT on the installation, the above Hazardous Materials will be disposed in accordance with all applicable federal, state and local laws and regulations, provided however, that the hazardous waste manifests or other shipping papers shall identify the Government as the sole generator of the Hazardous Materials.

## **GSA Model Areawide Contract**

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**00.09.0207**

**NEGOTIATED AREAWIDE CONTRACT  
No. GS-00P-00-BSD-XXXX  
BETWEEN THE  
UNITED STATES OF AMERICA  
AND  
XX**

THIS AREAWIDE CONTRACT FOR ELECTRIC, ELECTRIC TRANSMISSION, NATURAL GAS, GAS TRANSPORTATION, STEAM, AND ENERGY MANAGEMENT SERVICES is executed this **XX** day of **XX**, 2000, between the UNITED STATES OF AMERICA, acting through the Administrator of General Services (hereinafter referred to as the "Government"), pursuant to the authority contained in Section 201(a) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a), and the **XX**, a corporation organized and existing under the laws of the State of **XX**, and having its principal office and place of business at **XX, XX, XX** (hereinafter referred to as the "Contractor"):

WHEREAS, the Contractor now has on file with the **XX** Public Service Commission and/or with such other regulatory bodies as may have jurisdiction over the Contractor (hereinafter referred to collectively as the "Commission") all of its effective tariffs, rate schedules, riders, rules and terms and conditions of service, as applicable;

WHEREAS, with some exceptions, the Government is generally required by Chapter 1 of Title 48 of the Federal Acquisition Regulation (FAR), 48 CFR 41.204, to enter into a bilateral contract for utility service at each Federal facility where the value of the utility service provided is expected to exceed \$50,000 per year;

WHEREAS, where the Government has an areawide contract in effect with a particular utility then such utility service is normally to be procured thereunder;

WHEREAS, the Government is now purchasing such electric, gas, gas transportation and steam services from the Contractor under some other service arrangement;

WHEREAS, the Contractor and the Government mutually desire to enter into an areawide contract to be used by the agencies of the Government in obtaining electric, electric transmission, gas, gas transportation, steam and energy management services from the Contractor and to facilitate partnering arrangements as encouraged and authorized by

P.L. 102-486 (Energy Policy Act of 1992) 10 U.S.C. 2865 and 42 U.S.C. 8256;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

## ARTICLE 1. DEFINITIONS.

1.1. As used in this contract,

(a) the term "areawide contract" means a master contract entered into between the Government and a utility service supplier to cover the utility service acquisitions of all Federal agencies in the franchised certificated service territory from the particular utility service supplier for a period not to exceed ten (10) years;

(b) the term "Agency" means any Federal department, agency, or independent establishment in the executive branch of the Government, any establishment in the legislative or judicial branches of the Federal Government, or any wholly/mixed ownership Government corporation, as defined in the Government Corporation Control Act;

(c) the term "Ordering Agency" means any Agency that enters into a bilaterally executed Authorization for procurement of electric, gas, gas transportation and steam services under this areawide contract;

(d) the term "Authorization" means an order form used to acquire services under this areawide contract (see **Exhibit "A"** "Authorization for Electric Service", **Exhibit "B"** "Authorization for Electric Transmission", **Exhibit "C"** "Authorization for Natural Gas Service", **Exhibit "D"**, "Authorization for Gas Transportation Service", **Exhibit "E"**, Authorization for Steam Service, and **Exhibit "F"** "Authorization for Energy Management Service" annexed hereto);

(e) the term "service" means any commodities, financial incentives, goods, and/or services generally available from the Contractor pursuant to its tariffs, rates, rules, regulations, riders, practices, or terms and conditions of service, as may be modified, amended, or supplemented by the Contractor and approved from time to time by the Commission, and the rules and regulations adopted by the Commission;

(f) the term "energy conservation measure" means any specific electric or gas service intended to provide energy savings and/or demand reduction in Federal facilities (Reference Articles 18.2 & 18.3 herein); and

(g) the term "connection charge" means a Contractor's charge for facilities on either one or both sides of the Government's delivery point which facilities (1) are required to make connections with the nearest point of supply and (2) are, in accordance with the Contractor's tariffs and the Commission's rules and regulations, installed, owned, maintained and operated by the Contractor.

1.2. This Article is hereby expanded to include the additional definitions contained in FAR Clause 52.202-1, Definitions (OCT 1995), 48 C.F.R. 52.202-1, which are incorporated herein by reference.

## **ARTICLE 2. SCOPE AND DURATION OF CONTRACT.**

2.1. This areawide contract shall be in effect upon the date of execution and shall continue for a period of ten (10) years, except that the Government, pursuant to the clause contained in FAR 52.249-2 (48C.F.R.52.249-2), incorporated into this areawide contract under Article 14.1-25, or the Contractor, upon 60 days written notice to the Government, and without liability to the Government or any ordering agency, may terminate this areawide contract, in whole or in part, when it is in their respective interest to do so, provided, however, that neither the stated duration of this areawide contract nor any other termination of it, in whole or in part, pursuant to such incorporated clause, this Article 2.1, or otherwise, shall be construed to affect any obligation for any payment, charge, rate, or other matter that may be imposed pursuant to the Contractor's tariffs, rates, rules, regulations, riders, practices, or terms and conditions of service as may be modified, amended, or supplemented by the Contractor and approved from time to time by the Commission.

2.2. The provisions of this areawide contract shall not apply to the Contractor's service to any Agency until both the ordering Agency and the Contractor execute a written Authorization for electric, gas, gas transportation and/or steam services. Upon bilateral execution of an Authorization, the Contractor agrees to furnish to the ordering Agency, and the ordering Agency agrees to purchase from the Contractor, the above noted services for the installation(s) or facilities named in the Authorization pursuant to the terms of this areawide contract.

2.3. Nothing in this areawide contract shall be construed as precluding the ordering Agency and the Contractor from entering into an Authorization for negotiated rates or service of a special nature, provided such negotiated rates or service is in accordance with the rules and regulations of the Commission.

## **ARTICLE 3. EXISTING CONTRACTS.**

3.1. The parties agree that an Agency currently acquiring service from the Contractor under a separate written contract may continue to do so until that contract expires or until such time as the Agency and the Contractor mutually agree to terminate that separate written contract and have such service provided pursuant to this areawide contract by executing an appropriate Authorization or Authorizations.

3.2. Existing special rates and services of a special nature, if any, shall be continued under the Authorizations described in Article 3.1 if requested by the ordering Agency and if in accordance with the rules and regulations of the Commission.



#### **ARTICLE 4. AUTHORIZATION PROCEDURE AND SERVICE DISCONNECTION.**

**4.1.** To obtain or change service under this areawide contract, the ordering Agency shall complete the appropriate Authorization and forward it to the Contractor. Upon the request of the ordering Agency, the Contractor shall endeavor to provide reasonable assistance to the ordering Agency in selecting the service classification which may be most favorable to the ordering Agency. Upon execution of an Authorization by both the Contractor and the ordering Agency, the date of initiation or change in service shall be effective as of the date specified in the Authorization. An executed copy of the Authorization (cover page only) shall be transmitted by the ordering Agency to GSA at the address provided in Article 16.1.

**4.2.** During the term of this areawide contract, effective Authorizations need not be amended, modified, or changed by an ordering Agency to reflect changes in: accounting and appropriation data, rates or other terms applicable to the service classification under which the ordering Agency receives service, terms of the Contractor's tariff, the Contractor's cost of purchased fuel, or the estimated annual cost of service. Such changes are considered internal to the party involved. Where changes are required in effective Authorizations because of a change in the service requirements of an ordering Agency, an amended Authorization shall be mutually agreed upon and executed.

**4.3.** An ordering Agency or the contractor may discontinue service provided pursuant to this areawide contract to a particular Federal facility or installation by delivering a written Termination Authorization to the other. Such discontinuance of service by an ordering Agency or the Contractor shall be in accordance with the terms of this areawide contract and the Contractor's tariffs, rates, rules, regulations, riders, practices, and terms and conditions of service as may be modified, amended, or supplemented by the Contractor and approved from time to time by the Commission.

**4.4** Within the authorities of the Ordering Agency, the term of any individual Authorization is independent of the expiration date of this areawide contract and the conditions and articles of this areawide contract shall apply throughout the term of any Authorization placed against it in accordance with Article 18.5 herein.

#### **ARTICLE 5. RATES, CHARGES, AND PUBLIC REGULATION.**

**5.1.** Subject to the provisions of Article 2.3, all electric, gas, gas transportation and steam purchases under this areawide contract as well as any other action under this areawide contract shall be in accordance with, and subject to, the Contractor's rates, tariffs, rules, regulations, riders, practices, or terms and conditions of service, as may be modified, amended, or supplemented by the Contractor and approved from time to time by the Commission, except to the extent that same are preempted by Federal law. The Contractor shall furnish the Government, at the address provided in Article 16.1, one complete set of its tariffs in effect as of the date of this areawide contract and, upon request of an ordering Agency, the Contractor shall provide a copy of any newly effective or amended tariff

in accordance with the Contractor's tariff distribution practices and policies applicable to all customers. The failure of the Contractor to furnish any or all of its tariffs in accordance with this Article 5.1 shall not be grounds for withholding or denying payment at the effective rates stated therein for any electric, gas, gas transportation and steam services provided.

**5.2.** If, during the term of this areawide contract, the Commission approves a change in rates for services specified in Authorizations in effect hereunder, the Contractor agrees to continue to furnish, and the ordering Agency agrees to continue to pay for, those services at the newly approved rates from and after the date such rates are made effective. As provided in Article 4.2, modification of any Authorization hereunder is not necessary to implement higher or lower rates.

**5.3.** The Contractor hereby represents and warrants to the Government that the service rates available to any ordering Agencies hereunder shall at all times not exceed those available to any other customer served under the same service classification for the same or comparable service, under like conditions of use. Nothing herein shall require the Contractor to apply service rates that are inapplicable to the ordering Agency.

**5.4.** To the extent required by the Commission rule or regulation, the Contractor agrees to notify each ordering Agency of all new service classifications for which the ordering Agency may qualify. If requested in an Authorization by the ordering Agency, the Contractor shall provide service in accordance with the new service classification and commence billing under the new service classification beginning with the next applicable billing cycle following receipt by the Contractor of the request, or upon the installation of any additional facilities necessary to accomplish the billing.

**5.5.** Reasonable written notice via an Authorization shall be given by the ordering Agency to the Contractor, at the address provided in Article 16.2, of any material changes proposed in the volume or characteristic of electric, gas, gas transportation and steam services required by the ordering Agency.

**5.6** To the extent required by the Contractor's tariffs, the Commission's rules and regulations, or the Contractor's policies and practices applicable to all customers, and in accordance therewith, any necessary extension, alteration, relocation, or reinforcement of the Contractor's transmission or distribution lines, related special facilities, service arrangements, demand side management services (including any rebates to which the ordering Agency may be entitled), energy audit services, or other services required or requested by an ordering Agency shall be provided and, as applicable, billed for, by the Contractor. To the extent available from the Contractor, the Contractor shall provide and, as applicable, bill for such technical assistance on or concerning an ordering Agency's equipment (such as the inspection or repair of such equipment) as may be requested by such ordering Agency. The charges for such technical assistance shall be calculated in accordance with the Contractor's applicable billing schedule in effect at the time the technical assistance is rendered. The Authorization or any other agreement used to obtain and provide the matters, services, or technical assistance described in this Article 5.6 shall contain information

descriptive of the matters, services, or technical assistance required or requested, including the amount of (or method to determine) any payment to be made by the ordering Agency to the Contractor for the provision of said matters, services, or technical assistance.

**5.7** Any charges for matters or services referenced in Article 5.6 hereof which are not established in the Contractor's tariff or in the Commission's rules or regulations shall be subject to audit by the ordering Agency prior to payment; provided, however, that notwithstanding such right to audit, payment for the matters and services referenced in Article 5.6 thereof shall not be unreasonably withheld or denied. The Contractor further warrants and represents to the Government that charges for the matters or services referenced in Article 5.6 hereof will not exceed the charges billed to other customers of the Contractor served under the same service classification for like matters or services provided under similar circumstances.

#### **ARTICLE 6. BILLS AND BILLING DATA.**

**6.1** The electric, gas, gas transportation and steam services supplied hereunder shall be billed to the ordering Agency at the address specified in each Authorization. Bills shall be submitted in an original only, unless otherwise specified in the Authorization. All bills shall contain such data as is required by the Commission to substantiate the billing, and such other reasonable and available data as may be requested by the ordering Agency, provided that such other data are contained in bills provided to other customers of the Contractor served under the same service classification as the ordering Agency.

#### **ARTICLE 7. PAYMENTS FOR SERVICES.**

**7.1.** All bills for services rendered (which term includes utility services provided and any other payment, charge, rate, or other matter that may be imposed pursuant to the Contractor's tariffs, rates, rules, regulations, riders, practices, or terms and conditions or service as may be modified, amended, or supplemented by the Contractor and approved from time to time by the Commission) under Authorizations pursuant to this areawide contract shall be paid by the ordering Agency in accordance with such tariffs, rates, rules, regulations, riders, practices, or terms and conditions of service.

**7.2.** Currently, a late payment charge of one and one-half percent (1-1/2%) per monthly billing period will be assessed upon the unpaid balance of any utility bill twenty-five (25) calendar days after the date the bill is rendered by the Contractor. Changes in such tariffs, rates, rules, regulations, riders, practices, or terms and conditions or service shall supersede the provisions of this Article 7.2, as applicable.

**7.3.** The ordering Agency shall be entitled to any billing discounts, financial incentives or rebates available from the Contractor to other customers of the same service classification under like conditions of use and service. Nothing herein shall require the Contractor to apply rates that are inapplicable to the ordering Agency.

**7.4.** Payments hereunder shall not normally be made in advance of services rendered in accordance with 48 C.F.R. Subpart 32.4 unless required by the Contractor's tariff.

**7.5.** Each payment made by Treasury check to the Contractor shall include the Contractor's billing stub(s), or a Government or ordering Agency payment document, that clearly and correctly lists all of the Contractor's account numbers to which the payment applies and the dollar amount applicable to each account. If payment is by Electronic Funds Transfer either through the Automated Clearing House (ACH) or the Federal Reserve Wire Transfer System, the provisions of FAR Subpart 52.232-34 shall apply (See Article 14).

**7.6.** Unless otherwise provided by law or in an Authorization, the following provisions shall apply:

(a) Payment for energy conservation measures, when authorized as Energy Management Service (EMS), shall be equal to the direct cost of capital or financing amortized over a negotiated payment term commencing on the date of acceptance of the completed installation;

(b) The payment term for Authorizations involving energy conservation measures shall be calculated to enable the ordering Agency's monthly payment to be lower than the estimated cost savings to be realized from its implementation. In no event, however, shall this term exceed 80% of the useful life of the equipment/material to be installed.

## **ARTICLE 8. METERS.**

**8.1.** Metering equipment of standard manufacture suitable to measure all electric, gas, gas transportation and steam services supplied by the Contractor hereunder shall be furnished, installed, calibrated and maintained by the Contractor at its expense. In the event any meter fails to register or registers incorrectly, as determined by the regulations of the Commission, billing adjustments shall be made in accordance with such regulations.

**8.2.** The Contractor, so far as possible, shall read all meters monthly in accordance with the Contractor's tariff and the Commission's regulations.

**8.3.** Meters shall be inspected upon installation at no direct charge to the ordering Agency. Subsequent inspection, periodic testing, repair, and replacement of meters shall be done in such place and manner as provided by the Commission's regulations. Upon notice that a meter is failing to register correctly, the Contractor shall take immediate steps to effect replacement or repair. Ordering Agencies shall have the right to request a meter test in accordance with the procedures prescribed in the Commission's regulations. The tests and applicable meter accuracy standards are those set forth in the Commission's regulations. The expense of meter tests shall be borne by the party designated as responsible therefore in the Commission's regulations.

## **ARTICLE 9. EQUIPMENT AND FACILITIES.**

**9.1.** Subject to the provisions of Article 5.6 hereof, the responsibility for owning, furnishing, installing, and maintaining all equipment and

facilities (other than meters) required to supply service at the delivery point(s) specified in an Authorization shall be determined in accordance with the Contractor's tariffs, its policies and practices, and the Commission's rules and regulations. The ordering Agency shall provide, free of charge to the Contractor, mutually agreeable locations on its premises for the installation of meters and such other equipment furnished and owned by the Contractor and necessary to supply service hereunder. The Contractor shall, at all times during the life of this areawide contract, operate and maintain at its expense such equipment or facilities as for which it has responsibility in accordance with this Article 9.1, and shall assume all taxes and other charges in connection therewith. To the extent required by the Contractor's tariffs and the Commission's rules and regulations, and in accordance thereof, such equipment and facilities as for which the Contractor has responsibility in accordance with this Article 9.1 shall be removed, and the Agency's premises restored, by the Contractor at its expense, within a reasonable time after discontinuance of service to the ordering Agency.

**9.2.** All necessary rights-of-way, easements and such other rights necessary to permit the Contractor to perform under this contract shall be obtained and the expense for same borne in accordance with the Contractor's tariffs and the Commission's rules and regulations.

#### **ARTICLE 10. LIABILITY.**

**10.1.** When the Government and/or an ordering Agency has limited or restricted the Contractor's right of access under Article 11 and thereby interfered with the Contractor's ability to supply service or to correct dangerous situations which are a threat to public safety, the Government shall indemnify and hold the Contractor harmless from any liability resulting from such restricted or limited access to the extent permitted by law and authorized by appropriations. This Article (10.1) shall not be construed to limit the Government's liability under applicable law.

**10.2.** The Contractor's liability to the Government and to any ordering Agency for any failure to supply service, for any interruptions in service, and for any irregular or defective service shall be determined in accordance with the Contractor's tariffs.

#### **ARTICLE 11. ACCESS TO PREMISES.**

**11.1.** The Contractor shall have access to the premises served at all reasonable times during the term of this areawide contract and at its expiration or termination for the purpose of reading meters, making installations, repairs, or removals of the Contractor's equipment, or for any other proper purposes hereunder; provided, however, that proper military or other governmental authority may limit or restrict such right of access in any manner considered by such authority to be reasonably necessary or advisable.

#### **ARTICLE 12. PARTIES OF INTEREST.**

**12.1.** This areawide contract shall be binding upon and inure to the benefit of the successors, legal representatives, and assignees of the respective parties hereto.

## ARTICLE 13. REPRESENTATIONS AND CERTIFICATIONS.

**13.1.** This areawide contract incorporates by reference the representations and certifications made by the Contractor on Form PBS3503 which is on file with the Government.

## ARTICLE 14. SUPPLEMENTAL CLAUSES.

**14.1.** Clauses Incorporated by Reference (FAR 52.252-2) (JUN 1988). This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

<u>No.</u>	<u>FAR REF</u>	<u>Federal Acquisition Regulation Clause</u>
(1)	52.202-1	Definitions (OCT 1995)
(2)	52.203-3	Gratuities (APR 1984)
(3)	52.203-5	Covenant Against Contingent Fees (APR 1984)
(4)	52.203-6	Restrictions on Subcontractor Sales to the Government (JUL 1995)
(5)	52.203-7	Anti-Kickback Procedures (JUL 1995)
(6)	52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
(7)	52.204-4	Printing/Copying Double-Sided on Recycled Paper (JUN 1996)
(8)	52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (JUL 1995)
(9)	52.219-8	Utilization of Small Business Concerns (OCT 1999)
(10)	52.219-9	Small Business Subcontracting Plan (OCT 1999)
(11)	52.222-26	Equal Opportunity (APR 1984)
(12)	52.223-2	Clean Air and Water (APR 1984)
(13)	52.223-14	Toxic Chemical Release Reporting
(14)	52.232-23	Assignment of Claims (JAN 1986)
(15)	52.232-34	Electronic Funds Transfer Payment
(16)	52.233-1	Disputes (OCT 1995) (Alternate I)(DEC 1991)
(17)	52.237-2	Protection of Government Buildings, Equipment, and Vegetation (APR 1984)
(18)	52.241-2	Order of Precedence - Utilities
(19)	52.241-4	Change in Class of Service
(20)	52.241-5	Contractor's Facilities
(21)	52.241-11	Multiple Service Locations
(22)	52.242-13	Bankruptcy (JUL 1995)
(23)	52.243-1	Changes-Fixed Price(AUG 1987) (Alt.I)(APR 1984)
(24)	52.244-5	Competition in Subcontracting (Dec 1996)
(25)	52.249-2	Termination for Convenience of the Government (Fixed Price)(SEP 1996) Alternate I(SEP 1996)
(26)	52.253-1	Computer Generated Forms (JAN 1991)

### **14.2. 552.233-70 Disputes (Utility Contracts) (APR 1984)**

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of retail rates, rate schedules, tariffs, riders, and tariff related terms provided under this contract and conditions of service are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

### 14.3 Unregulated Services

Pursuant to this areawide contract, the Contractor may provide energy related services that are not subject to rate and tariff regulation by the Commission under a pre-approved alternative (FAR 52.241-8 below) that demonstrates the Contractor will provide these services under terms and conditions that are competitive and otherwise in the best interests of the ordering Agency. If, as determined by the ordering Agency, the conditions for use of this pre-approved alternative cannot be satisfied, then the ordering Agency should consider the extent to which a competitive acquisition process is required to select and award a Contract for these unregulated services. If an Authorization under this areawide contract is utilized, the prices and terms and conditions for unregulated services offered by the Contractor shall be negotiated subject to the requirements of FAR 41.5, subject to the following general requirements.

#### **52.241-8** Change in Rates or Terms and Conditions of Service For Unregulated Services (FEB 1995)- Modified

(a) This clause applies to the extent that services furnished hereunder are not subject to tariff and/or regulation of the Commission.

(b) Either party may request a change in rates or terms and conditions of service, unless otherwise provided in this areawide contract. Both parties agree to enter in negotiations concerning such changes upon receipt of a request, in the form of an Authorization, which specifies the terms and conditions of the proposed change in service.

(c) The Contractor agrees that throughout the life of any Authorization, the terms and conditions so negotiated will not be priced at rates in excess of published and unpublished rates charged to any other customer of the same class under similar terms and conditions of use and service.

(d) The failure of the parties to resolve any dispute arising from the conduct of services under this clause shall be subject to the Disputes clause, FAR 52.233-1 (Article 14.1-16)

(e) Any changes, rates, and/or services as a result of such negotiations shall be made a part of this contract by the issuance of a fully executed Authorization.

### 14.4 Repeal of Clauses During Term of Contract.

If, during the term of this areawide contract, any of the clauses contained in this Article are repealed, revoked, or dissolved by the Government, then such clauses shall no longer be part of this contract as of the date of such repeal, revocation, or dissolution. The elimination of these clauses by reason of such repeal, revocation, or dissolution shall not affect the continuing validity and effectiveness of the remainder of the contract or other clauses referenced in this Article.

## **ARTICLE 15. SMALL BUSINESS SUBCONTRACTING PLAN**

Attached hereto and made a part hereof by reference is a SUBCONTRACTING PLAN FOR SMALL BUSINESS CONCERNS, SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY & ECONOMICALLY DISADVANTAGED INDIVIDUALS AND WOMAN OWNED SMALL BUSINESS CONCERNS negotiated between the Contractor and the Government, which is applicable on a company wide basis pursuant to the requirements of Section 211 of P.L. 95-507 (15 U.S.C. 637d). The Contractor expressly understands that this subcontracting plan is an annual plan and hereby agrees to submit a new subcontracting plan by May 15<sup>th</sup> of each year during the life of this Contract.

## **ARTICLE 16. NOTICES**

**16.1.** Unless specially provided otherwise, all notices required to be provided to the Government under this areawide contract shall be mailed to: Public Utilities Division - (PNEU), General Services Administration, Washington, DC 20405.

**16.2.** All inquiries and notices to the Contractor regarding this areawide contract shall be mailed to: **XX** (telephone number **XX/XX-XX**), or to such other person as the Contractor may hereafter designate in writing.

## **ARTICLE 17. REPORTING**

**17.1** The Contractor shall provide, as prescribed and directed by the contracting officer, an annual report on performance in accordance with the approved subcontracting plan for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals as required by Article 15.

**17.2** The Contractor shall provide, no later than the end of February the contracting officer at the address indicated in Article 16.1 an annual report for the preceding calendar year which will provide a summary listing of all Federal customers requiring service or change in service under this areawide contract. This summary report will include: (a) name of Ordering Agency, (b) service address, (c) nature of service, and (d) annual dollar value and quantity of service (if applicable).

## **ARTICLE 18. MISCELLANEOUS.**

**18.1. Contract administration:** The ordering Agency shall assist in the day-to-day administration of the utility service being provided to it under an Authorization.

**18.2. Measurement and verification:** Energy Conservation Measures (ECM) will not be normally considered unless a net overall energy usage or cost reduction can be demonstrated and verified. Verification standards for energy projects are established in the North-American Energy Measurement and Verification Protocol (NEMVP), published by the Department of Energy's Federal Energy Management Program (FEMP).

**18.3. Subcontracting:** The Contractor may perform any or all of its requested services through subcontractors, including its unregulated affiliates. ECM subcontractors shall be competitively selected in accordance with FAR 52.244-5 (Article 14.1-24 herein). Subcontractor



selection shall be based on cost, experience, past performance and other such factors as the Contractor and the Ordering Agency may mutually deem appropriate and reasonably related to the Government's minimum requirements. Upon request by the Government, the Contractor shall make available to the contracting officer all documents related to the selection of a subcontractor. In no event shall the service be provided by subcontractors listed as excluded from Federal Procurement Programs maintained by GSA pursuant to 48 C.F.R. 9.404 (Article 14.1-8 herein).

**18.4. Warranties:** The Company shall pass through to the Agency all warranties on equipment installed or provided by it or its subcontractors on Government property with the following representation:

(Name of Contractor) ACNOWLEDGES THAT THE UNITED STATES OF AMERICA WILL OWN OR LEASE THE EQUIPMENT AND/OR MATERIALS BEING INSTALLED OR SUPPLIED HEREUNDER, AND, ACCORDINGLY, AGREES THAT ALL WARRANTIES SET FORTH HEREIN, OR OTHERWISE PROVIDED BY LAW IN FAVOR OF COMPANY SHALL INURE ALSO TO THE BENEFIT OF THE UNITED STATES AND THAT ALL CLAIMS ARISING FROM ANY BREACH OF SUCH WARRANTIES OR AS A RESULT OF DEFECTS IN OR REPAIRS TO SUCH EQUIPMENT OR SUPPLIES MAY BE ASSERTED AGAINST (Name of Contractor) OR MANUFACTURER DIRECTLY BY THE UNITED STATES.

**18.5. Term of Authorizations:** It is recognized that during the life of this contract, situations and/or requirements may arise where it may be desirable that the term of service to an ordering Agency's facility extend beyond the term of this contract. In such event, the particular Authorization involved may specify a term extending beyond the term of this contract, provided that is within the contracting authority of the ordering agency.

**18.6. Succeeding contract:** Although it is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under this areawide contract beyond the term hereof, it is contemplated and anticipated that, upon expiration of this contract, a similar successor contract will be agreed upon by the Government and the Contractor. However, in the event a successor contract becomes effective at the expiration of this contract, the terms and conditions of the successor contract shall apply to any Authorization extending beyond the term of this contract. In any event, the maximum term of any Authorization, whether under this contract or extending into a successor contract, is limited to 10 years unless otherwise authorized by Public Law or regulation.

**18.7. Anti-Deficiency:** Unless otherwise authorized by Public Law or Federal Regulation, nothing contained herein shall be construed as binding the Government to expend, in any one fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the matter of the contract or to involve the Government in an obligation for the future expenditure of monies before an appropriation is made (Anti-Deficiency Act, 31 U.S.C. 1341.A.1).

**18.8. Obligation to Serve:** Nothing contained in this contract shall obligate the Contractor to take any action which it may consider to be detrimental to its obligations as a public utility.

IN WITNESS WHEREOF, the parties have executed this contract as of the day  
and the year first above written.

**UNITED STATES OF AMERICA**  
Acting through the Administrator  
of General Services

By: \_\_\_\_\_

Public Utilities Division  
Contracting Officer

ATTEST:

By: \_\_\_\_\_

Public Utilities Division

**XX**

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CERTIFICATE**

I, \_\_\_\_\_, certify that I am \_\_\_\_\_ of **XX**, INC., a corporation, named as Contractor in the negotiated areawide public utility contract No. GS-OOP-00-BSD-**XX**; that \_\_\_\_\_, who signed said contract on behalf of the Contractor, was then \_\_\_\_\_ of said Corporation; and that said contract was duly signed for and on behalf of said Corporation and is within the scope of its corporate powers.

/s/\_\_\_\_\_

(Corporate Seal)

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